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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Sixth periodic reports of States parties due in 2013

New Zealand*, **

[Date received: 20 December 2013]

* The fifth periodic report of New Zealand is contained in document CAT/C/NZL/5; it was considered by the Committee at its 875th and 876th meetings, held on 1 and 4 May 2009 (CAT/C/SR.875 and 876). For its consideration, see the Committee's concluding observations (CAT/C/NZL/CO/5).

** The present document is being issued without formal editing.

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I. Introduction

1. New Zealand is pleased to present its sixth periodic report to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) which responds to:

(a) The list of issues prepared by the Committee against Torture (the Committee) prior to the submission of the sixth periodic report, dated 12 July 2012 (CAT/C/NZL/Q/6);

(b) The letter from the Rapporteur for Follow-up on Concluding Observations of the Committee against Torture (the Rapporteur), dated 7 May 2012.

Summary of key developments

2. Legislative changes since our last periodic report to the Committee include:

(a) The commencement of the Immigration Act 2009, which, among other things, prohibits expulsion to a place where people face a risk of torture;

(b) The introduction of the Immigration Amendment (Mass Arrivals) Act 2013, which gives agencies the time needed to make enquiries into the backgrounds of groups of individuals, pending decisions on refugee or protection claims;

(c) The introduction of the Victims of Crime Reform Bill, which will enhance victims' rights and role in criminal justice processes, and improve the responses of government agencies to victims of crime;

(d) The introduction of a Bill to establish Victims' Orders Against Violent Offenders, to reduce the likelihood that victims have unwanted contact with serious violent and sexual offenders who have offended against them;

(e) Amendments to Family Court legislation, to enable faster, less adversarial resolutions;

(f) The introduction of Police Safety Orders, to protect women and their families when police cannot arrest someone for family violence due to insufficient evidence;

(g) The introduction of a Vulnerable Children's Bill with tough new measures to protect children.

3. The Government has appointed an independent advisory panel to collect public views on constitutional issues. This panel will report to the Government in 2013.

4. In 2013, the Government broadened New Zealand's definition of trafficking.

5. Since New Zealand's last periodic report to the Committee there have been no prosecutions for torture or trafficking.

6. New strategic priorities or Better Public Services targets have been introduced, with an accompanying increased focus on and investment in policies and programmes across Government to address the drivers of crime, reduce violence against women and children, and reduce re-offending. Results are already being felt, including:

(a) Māori youth offending dropped by 32 percent between 2008 and 2012;

(b) The imposing of alcohol and drug treatment as a condition of sentence doubled between 2006 and 2012;

(c) More than 14 percent of criminal charges are now resolved by pre-charge warnings instead of proceeding to prosecution; and

(d) The rate of preventable hospitalisations for Māori and Pacific children aged zero to four years of age, and who live in the most deprived areas, dropped 22 percent and 17 percent respectively between 2006/07 and 2011/12.

7. Since 2009, over 80 percent of all people convicted each year have been given a non-custodial sentence, thereby reducing prison numbers and facilitating attachment to employment, community and family.

8. A Victims Centre was established within the Ministry of Justice on 1 July 2011 as part of the Government's review of victims' rights in the criminal justice system.

9. The Ministry of Social Development has committed to the Minister responsible that all historic abuse claims with respect to that department will be closed by the end of 2020.

10. The post-trial period of Taser use by the New Zealand Police (since March 2010) has resulted in only 27 Taser uses per 10,000 apprehensions. Tasers have provided the Police with a non-lethal method of force and also provides a degree of protection in situations of physical threat when apprehending a violent or aggressive individual.

11. New Zealand has introduced new Standards and Guidelines since 2009 on the use of seclusion in mental health facilities. These have resulted in a reduction in the use of seclusion.

II. Specific information on the implementation of articles 1–16 of the Convention

Article 2

1. Domestic law and compatibility with the Convention

New Zealand's Constitution

12. New Zealand implements international human rights obligations through domestic legislation, policies and practices. The New Zealand Bill of Rights Act 1990 (the Bill of Rights Act) covers primary civil and political rights. We implement other rights through subject-specific legislation, policies and practices, for example:

(a) The Crimes of Torture Act 1989 was amended in 2007 to give effect to New Zealand's obligations under the Optional Protocol to the Convention;

(b) Following the adoption of the Optional Protocol, the New Zealand Government designated five existing organisations to fulfil the role of National Preventive Mechanism. The National Preventive Mechanism is discussed in Section 8 under Article 2, below.

13. The Bill of Rights Act applies to other legislation in four respects:

(a) All Government policy and legislative proposals are assessed for their consistency with the Bill of Rights Act and Cabinet must be informed about any potential inconsistencies;

(b) The Attorney-General must bring any Bill that appears to be inconsistent with the Bill of Rights Act to the attention of the House of Representatives when the Bill is introduced;

(c) To the extent reasonably possible, New Zealand courts must interpret domestic legislation consistently with international obligations and with the rights affirmed by the Bill of Rights Act;

(d) All administrative decisions and all secondary legislation (including regulations and local authority bylaws) must be consistent with the Bill of Rights Act unless the inconsistency is clearly authorised by the empowering legislation.

Constitutional development

14. New Zealand's constitutional arrangements and legislative framework have evolved over many years and increasingly reflect regard for the Treaty of Waitangi as a founding document of modern Government in New Zealand.

15. In 2010, the Government announced a consideration of constitutional issues. The terms of reference for this work includes a review of whether New Zealand needs a written constitution. It also includes consideration of Bill of Rights issues such as whether the Bill of Rights Act should be entrenched or become supreme law (with the ability to override other laws that are inconsistent with the rights it affirms).

16. The Government has appointed an independent advisory panel, representing a cross-section of New Zealand society, to collect public views on the constitutional topics. The panel will report to the Government in late 2013. The Government will then consider whether any further work on particular issues would be desirable.

2. Rights of people in custody

Information about charges and access to a lawyer

17. New Zealand has requirements in place to guarantee the rights of persons in police custody from the very outset of detention.

18. Any person who is arrested or detained must be told without delay, and in private, of their right to consult and instruct a lawyer. That right may be exercised without cost under the Police Detention Legal Assistance Scheme. People detained by the police must be informed of their rights in a language they can understand.

19. Police officers must provide suspects with a list of lawyers practising in the area and allow them to telephone the lawyer they choose. If the suspect does not ask for a lawyer but his or her relatives do, the officer contacts the lawyer the family nominates.

20. If suspects are interviewed after arrest, they are once again advised of their rights to a lawyer prior to the interview. If the suspect indicates a desire to exercise his or her rights to legal advice, the interview must be stopped until the suspect has consulted a lawyer.

21. Lawyers can meet their clients at any time. As far as practicable, communication between a suspect and their lawyer should not be overheard by anyone, including other prisoners, subject to the necessity of preventing escape.

Informing suspects of charges against them in a language they understand

22. Police policy requires officers to use a suitably qualified interpreter if the suspect is not able to understand the interview in English or has a communication disability. This is a free service for the suspect. Non-New Zealand citizens taken into custody are given the option to have their embassy or High Commission contacted or visits from an embassy/commission arranged. Children must be spoken to in a manner they understand.

Detention registered

23. The New Zealand Police maintains a secure database (the National Intelligence Application) that registers all detentions. Only authorised police staff can access this database. Its integrity is maintained through random audits to ensure that all accesses of the database are appropriate.

Access to an independent doctor, if possible of their own choice

24. Any suspect has the right to medical attention if required, although it is not necessarily a doctor of the suspect's choice. Police in all districts maintain a roster of doctors who are available within a reasonable timeframe. The doctors are not police employees, although their costs are met by police. If a prisoner requests a specific doctor, police will contact that doctor.

The right to notify family members or other persons about detention

25. Suspects are advised that with their permission, police officers will notify a relative or friend of their choice and inform the relative/friend of their arrest and whether they can be bailed. If a suspect is aged under 17 years, police must inform a parent, guardian or other caregiver of the suspect's arrest, regardless of the suspect's wishes, as soon as practicable. This is a statutory requirement.

26. The Children, Young Persons and Their Families Act 1989 requires any statement made by a person under 17 years to be made in the presence of a nominated adult. The role of the nominated adult is to:

(a) Take reasonable steps to ensure that the child or young person understands their rights as explained by the police;

(b) Support the child or young person before and during any questioning and while the child or young person is making any statement.

Rights to legal representation for persons with a disability or mental illness

27. The New Zealand Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH (CAT) Act) provides a framework of rights and protections for people receiving compulsory mental health treatment. The MH (CAT) Act provides for the appointment of district inspectors of mental health who are responsible for safeguarding the rights of people under the MH(CAT) Act. District inspectors are lawyers appointed by the Minister of Health and their services are free to people who are subject to compulsory mental health treatment. There are currently 34 district inspectors of mental health throughout New Zealand.

28. District inspectors monitor services and patients' mental health assessments, care, and treatment under the Act to ensure every person has the opportunity to appeal and seek review of their treatment both clinically and legally.

29. The Director of Mental Health is a statutory role under the MH (CAT) Act that sits within the Ministry of Health. The Director can ask a district inspector to investigate or conduct an inquiry into the treatment of an individual under the Act, or into wider issues related to the mental health service.

30. Guidelines for the role and activities of district inspectors are issued by the Director-General of the Ministry of Health under the Act. District inspectors can also be designated to safeguard the rights of people subject to a compulsory care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the ID (CC&R) Act). They can visit and inspect facilities, handle and resolve complaints of breaches of the rights of care

recipients, conduct inquiries and investigations into any alleged breach of duty by a director, employee, or agent of a service, and assist with inquiries by High Court judges if requested to do so. District inspectors are required to report on their activities to the Ministry of Health each month.

31. Clients of mental health services and care recipients can complain about their treatment to the Health and Disability Commissioner, who has powers to investigate under the Health and Disability Commissioner Act 1994. Health and Disability advocates are available to support people to make a complaint. Their services are free to people who are subject to compulsory mental health treatment.

3. Rights of minorities

Safeguards to protect minorities in the criminal justice system

32. The rights of minority groups in the criminal justice system are supported by carefully designed processes in the court and corrections systems.

33. Everyone prosecuted for an offence has access to legal representation. Legal representation can involve a lawyer of the person's choice (including from their own cultural background) and, if necessary, an interpreter. For legal-aided defendants facing less serious charges, Legal Aid Services appoints an approved lawyer. For more serious charges, the legal-aided defendant can choose their lawyer, provided that they are approved as a legal aid lawyer.

34. People charged with an offence punishable by imprisonment of two years or more have the right to trial by a jury of 12 people. The jury is chosen from a cross-section of the community from a range of ethnic and national origins. A lawyer may challenge a potential juror in court before the person reaches the jury box. This allows lawyers (from both the prosecution and the defence) to ensure that there is adequate representation of different ethnic and national groups on the jury.

35. Everyone has the right to address the court in Te Reo Māori (the Māori language) or New Zealand Sign Language. These, along with English, are official languages in New Zealand. People wishing to address the court in another language can make an application to the court for an interpreter. The courts pay for all interpretation and translations delivered in the court.

Implementation of section 27 of the Sentencing Act 2002

36. Section 27 of the Sentencing Act 2002 provides for the courts to hear submissions relating to the offender's community and cultural background. This initiative aims to address the causes of offending prior to sentencing, hearing from extended family members about the support available for the defendant and increasing the availability and effectiveness of appropriate alternative sentences. There have been 11 recorded cases of a hearing under section 27 since 2011.

37. Given the difficulties of recording data on the use of this initiative, we are not in a position to provide accurate statistics of use or results. The Ministry of Justice is exploring ways to record section 27 cases more effectively.

4. Violence against women

Statistics on violence against women

38. Data collated for the New Zealand Families Commission, reproduced in tables 1a to 1d below, shows that (http://www.familiescommission.org.nz/publications/briefs-and-statistics/violence-against-women):

(a) In 2011 there were 7,896 recorded male assaults female offences and 5,232 recorded offences for breaching a protection order (not necessarily intimate partner violence);

(b) Sixty-six percent of all prosecutions in 2011 for male assaults of a female resulted in a conviction; 54 percent of which were given a community sentence and 30 percent of which received a custodial sentence;

(c) Of apprehensions in 2012 for sexual assault against an adult woman, 78 percent were prosecuted;

(d) The New Zealand Police recorded 87,622 family violence investigations in 2012; 72 percent of which involved a male offender; just under 50 percent of which had at least one offence recorded.

Table 1a
Male Assaults Female and Breach of Protection Order Offences 2009-2011

	2009	*2010*	*2011*
Total recorded male assaults female offences	9583	8925	7896
Number of resolved Male Assaults Female	8865	8185	7242
% of recorded offences	93%	92%	92%
Total recorded offences for breaching a protection order	5278	5332	5232
Number of resolved breaches of Protection Order offences	4759	4694	4759
% of recorded offences	90%	88%	91%

Source: New Zealand Police published in NZFVC *Data Summary: Violence Against Women 2013.*

Table 1b
Prosecutions and Convictions for Male Assaults Female 2005-2011

	2005	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*
Number of charges prosecuted	6348	6315	7106	7808	8004	7275	6515
Number of convictions	3,562	3,572	4,084	4,851	4,867	4,602	4,306
% of charges prosecuted	56%	57%	57%	62%	61%	63%	66%

Source: District Court published in NZFVC *Data Summary: Violence Against Women 2013.*

Table 1c
Convictions and Sentence Outcomes for Male Assaults Female 2005-2011

	2005	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*
Total sentences	3562	3572	4084	4851	4867	4602	4306
Number of custodial sentences	878	895	1,015	1,281	1,227	1,378	1,302

	2005	2006	2007	2008	2009	2010	2011
% of total sentences	25%	25%	25%	26%	25%	30%	30%
Number of community sentences	1,849	1,772	2,162	2,649	2,769	2,498	2,333
% of total sentences	52%	50%	53%	55%	57%	54%	54%
Number of other sentences	835	905	907	921	871	726	671
% of total sentences	23%	25%	22%	19%	18%	16%	16%

Source: District Court published in NZFVC *Data Summary: Violence Against Women 2013.*

Table 1d
Family Violence investigations 2009-2012

	2009	2010	2011	2012
Total number of family violence investigations	79,257	86,762	89,885	87,622
Investigations with at least one offence recorded	42,518	45,498	44,495	41,187
Investigations with no offence recorded	36,739	41,264	45,390	46,435
Number of children linked to FV investigations	73,121	87,368	94,442	101,293
Investigations where at least one child aged 0-16 was linked to the investigation	37,576	44,433	47,987	50,708
Total number of offenders linked to fv investigation	36,575	37,958	35,516	31,423
Male	26,821	27,363	25,237	22,666
	73%	72%	71%	72%
Female	6,960	7,645	7,089	6,407
	19%	20%	20%	20%
Other/Unknown	2,794	2,950	3,190	2,350
	8%	8%	9%	7%

Source: New Zealand Police published in NZFVC *Data Summary: Violence Against Women 2013.*

39. Data also shows that 91 percent of all applicants for a protection order under the Domestic Violence Act 1995 are women (2,776 out of 3,044 in 2011).

40. Of the 2,273 women in 2011/12 who accessed a safe house service 43 percent were European/Pakeha; 47 percent were Māori and six percent were Pasifika (Source: National Collective of Independent Women's Refuges annual reports, published in NZFVC *Data Summary: Violence Against Women 2013*).

41. To put the statistics into context, there were an estimated 1.293 million males aged 15 years and over and 1.379 million women in this age group in New Zealand, in 2011 (Source: Statistics New Zealand, derived from Census 2006 data). Māori make up about 14 percent of the general population.

42. People of Māori ethnicity are at greater risk of being both perpetrators and victims of violent crimes. Econometric analysis carried out by one of New Zealand's leading social researchers shows that ethnicity is, however, not significantly related to risks of perpetrating or being a victim of interpersonal violence when due allowance is made for social, family and related factors (Fergusson DM. Ethnicity and Interpersonal Violence in a New Zealand Birth Cohort. In Hawkins, Darnell F. (Ed). *Violent Crimes: Assessing Race and Ethnic Differences*. Cambridge: Cambridge University Press, 2003, pp 138-153).

43. The New Zealand Police are currently developing a new dataset on victims which will form part of New Zealand's key dataset and will provide comprehensive and comparable data in one place relating to violence and family violence against women. The completion date for this work is 2014.

Protective measures for women

44. New Zealand is improving the protection of women through legislation, policy priorities, and additional funding for initiatives on the ground. Key measures underway or recently implemented are listed below.

(a) Better Public Service targets - the Government is working to reduce the rate of violent crime, including family violence, by 20 percent (around 7,500 fewer violent crimes each year) by 2017 – relevant initiatives are discussed throughout this report;

(b) Domestic Violence Amendment Act 2013, part of which will come into force early 2014, increases the maximum penalty for breaching a protection order from two years to three years imprisonment and extends the definition of psychological violence in the Domestic Violence Act 1995 to include "economic and financial abuse". Other changes in the Domestic Violence Amendment Act 2013 will be implemented later in 2014. These include delivering safer and more effective non-violence programmes (for perpetrators) and for victims and children. All the changes are intended to improve safety and better respond to the needs of children and vulnerable people affected by domestic violence;

(c) Family Court Proceedings Reform Bill, currently being considered by Parliament, proposes to increase the maximum penalty for breaching a protection order from two years to three years imprisonment, improve family violence treatment programmes delivered through the Family Court, and extend the definition of domestic violence in the Domestic Violence Act to include "economic abuse"; These changes will encourage faster, less adversarial resolution of disputes, and enable the Family Court to focus on the most serious cases. The Court's processes and rules will be clarified, providing greater certainty for users, and making it easier for them to understand and navigate the court system.

(d) The Victims' Orders Against Violent Offenders Bill was introduced in May 2013. This Bill will establish a new civil non-contact order to reduce the likelihood of victims having unwanted contact with the serious violent and sexual offenders who have offended against them:

(e) The Taskforce for Action on Violence within Families is a cross-government initiative that implements a new Programme of Action each year. The 2013 Programme of Action focuses on improving primary prevention, evaluating the effectiveness of secondary and tertiary interventions, and exploring the merits of a national training framework to upskill the family violence workforce;

(f) Additional funding has been provided through Budget 2013 to help address family violence within Māori, Pasifika, migrant, and refugee groups.

Protective orders in cases of family violence

45. Any person who is, or has been, in a domestic relationship with another person may apply to the court for an order to protect themselves from that person if violence occurs.

46. Since July 2010, Police Safety Orders (PSOs) have been available to police to help them support the safety of people at risk and their children. A PSO may be issued when police attend a family violence incident and do not arrest a person for family violence (due to insufficient evidence), but have reasonable grounds to believe that a PSO is necessary to ensure the safety of the person at risk and any child usually residing with them.

47. PSOs have been well received by police and the community and are being executed as intended; strengthening the range of responses available to police when attending family violence incidents.

Public awareness campaigns about family violence

48. Two public awareness campaigns are being progressed under the umbrella of the Taskforce for Action on Violence within Families: Programme of Action.

49. New Zealand supports the global White Ribbon campaign, which is led by men who condemn violence against women and want to take action. The simplest way to support the campaign is to wear a white ribbon as a personal and public pledge to never commit, condone or remain silent about violence towards women.

50. The "it's not ok" campaign, launched in 2008, focuses on people who have changed their violent behaviour towards women and children, and encourages others to ask for help. The campaign has played a key role in mobilising communities to get involved in family violence prevention and is built around three key elements: community action, communication and research. Research in 2010 revealed that 58 percent of people who recall the "it's not ok" campaign have taken some kind of action as a result, up from 31 percent in 2008.

5. Violence against children

51. The causes of child maltreatment are complex and associated with multiple risk factors, which can be seen in some individuals and households. Some of these risk factors particularly impact on the Māori population, which will account for some of the greater contact with the child protection system and the higher rates of substantiated physical abuse.

52. Section 4 above on violence against women also discusses the drivers of the higher violence statistics in Māori families. Significant resourcing and new measures are in place to address our child abuse statistics.

Statistics on child victims

53. In 2012/13, there were 6,823 substantiated cases of child abuse for children aged zero to four years old, equivalent to 220 cases per 10,000 children of that age:

(a) The rate for Māori children remains consistently higher than the rate for Pasifika and other children. In 2012/13, there were 3,693 substantiated cases of child abuse of Māori children aged zero to four years, equivalent to almost 426 cases per 10,000 Māori children in this age group;

(b) This rate is 1.5 times higher than the rate for Pasifika children, and 3.7 times higher than the rate for other children in this age group.

54. The number of children zero to four years of age who are hospitalised for intentional injuries fluctuates from year to year:

(a) The total number decreased from 107 in 2010/11 to 79 in 2012/13;

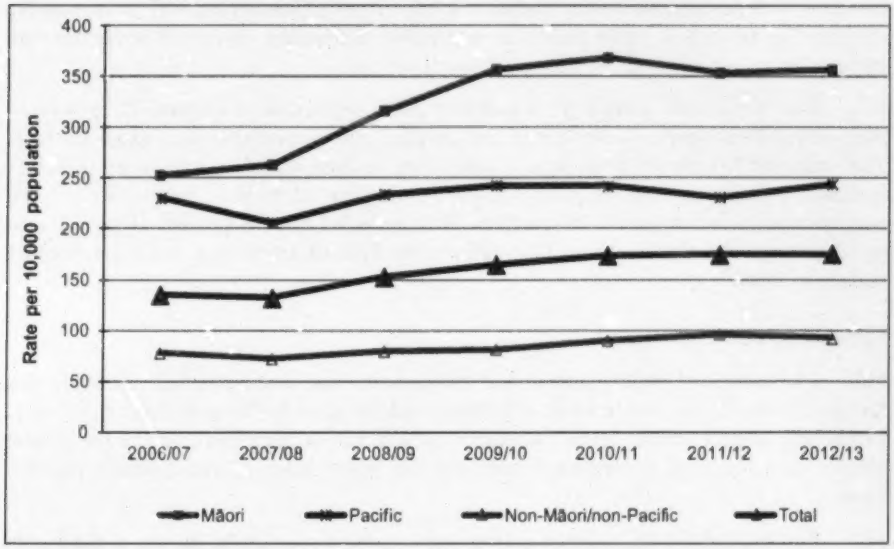
(b) Intentional injury hospitalisation rates for Māori were 1.6 times higher on average than Pasifika children, and 3.7 times higher than the rate for other children aged zero to four years from 2006/07 to 2012/13.

55. The total rate of substantiated cases of child abuse for five to nine year olds increased by 30 percent from 2006/07 to 2012/13, but has decreased since peaking in 2010/11 (illustrated in Figure 1):

(a) The rate of substantiated cases of child abuse for five to nine year olds continues to be highest among Māori. In 2012/13, there were 357 substantiated cases of child abuse per 10,000 Māori children in this age group;

(b) This rate was 1.5 times higher than the rate for Pasifika children and 3.9 times higher than the rate for other children.

Figure 1
Substantiated cases of child abuse per 10,000 population for children aged five to nine years old: 2006/07 to 2012/13



Source: Ministry of Social Development.

56. There is a high co-occurrence (30 to 60 percent) of partner abuse and child abuse, resulting in intentional injuries such as assault and homicide.

Cross-government initiatives to reduce child abuse – Including the Children's Action Plan for Vulnerable Children

57. Reducing violence against children is one of the Government's top ten Better Public Services result areas and targets. By 2017, we intend to halt the 10-year rise in children experiencing physical abuse. We aim to bring down the projected number of 4,000 children expected to experience substantiated physical abuse in 2017 to 2,936: a reduction of 25 percent in otherwise projected numbers for that year.

58. The Children's Action Plan for Vulnerable Children, published in October 2012, includes a range of measures to address child abuse, including:

(a) Legislation that will:

(i) Create new obligations for vetting and screening those who work with children; and

(ii) Restrict people who pose a high risk to the safety of children from living or associating with children.

(b) Creating a secure information system in order to connect the most vulnerable children to services earlier and better, supported by information sharing, risk profiling and tracking systems, and the monitoring of high-risk adults;

(c) Making it easier to report child abuse or raise concerns about children.

Corrections initiatives

59. The Department of Corrections, which manages New Zealand's prisoner population, offers programmes for offenders that aim to reduce violence in the home and address child abuse.

Education initiatives

60. The Taskforce for Action on Violence within Families (see Section 4 above) includes work on violence against children. This Taskforce renews its Programme of Action each year. In 2013, the Taskforce is producing guidance for schools on quality programmes for students addressing relationship violence and promoting respectful gender relations.

61. Social workers in schools provide early assistance and intervention for children and their extended family. It aims to prevent social problems from becoming more serious and creating a barrier to learning. The social workers are employed by non-government organisations and are based in low-decile primary, intermediate and secondary schools.

Health initiatives

62. The health sector has in place a number of initiatives that aim to prevent or reduce violence against children including:

(a) A national programme to prevent shaken baby syndrome;

(b) A National Child Protection Alert System, which enables clinicians to share information between hospitals in cases where there are child protection concerns, using the Ministry's National Medical Warning System register. Seven of the 20 district health boards had implemented this system as at 30 June 2013.

Training for identification and early response to child abuse

63. The New Zealand Police receives initial and regular refresher training about suspected child abuse at all levels of the organisation, from entry at recruitment through to specialist groups.

64. The Department of Corrections offers a family violence training course for community probation officers. From June 2013, Corrections is also training community probation staff to identify and reduce the incidences and impacts of family violence.

65. The Ministry of Health funds the Violence Intervention Programme which works to establish systems to support health professionals (as part of routine healthcare practice) to identify, assess and refer victims of partner abuse and child abuse and neglect. The focus is on presentations to: child and maternity services, mental health, sexual health, and alcohol and drug services, and emergency departments.

66. The Ministry of Health is leading the drafting of a report in 2013 on the merits of developing a national training framework to:

- Provide a consistent framework to up-skill the family violence workforce;
- Set out core competencies and common training requirements;
- Align with existing training infrastructures;
- Prioritise training investment in areas of greatest need.

Child Helplines

67. Healthline (advice for sick or symptomatic people) and PlunketLine (advice about children under the age of five years) are free of charge to callers on landlines or cellphones throughout New Zealand. Both services operate 24/7 and all calls are answered by registered nurses.

68. A "Child Protect" line is to be launched by the end of 2014 for the public to report concerns about child abuse by phone, email, text or online.

Online sexual abuse of children

69. New Zealand has been active in combating the abhorrent crime of online sexual abuse of children, in which children are re-victimised over and over by the international dissemination of this illegal material. New Zealand has joined the Global Alliance against Child Sexual Abuse Online, headed by the European Union and the United States, which is focused on combating this crime.

70. New Zealand has also introduced legislation to address sexual exploitation of children. The Objectionable Publications and Indecency Legislation Bill, introduced in 2013, reflects the Government's commitment to increase the penalties for producing, trading or possessing child pornography, and to provide greater protection for children from child pornography and related offending.

6. People trafficking

Statistics on people trafficking

71. No victims of trafficking have been identified in New Zealand since New Zealand's previous periodic report in 2009, and no cases of people trafficking have been prosecuted by the New Zealand Government.

Measures to prevent people trafficking

72. New Zealand's record on trafficking issues within our borders indicates that our commitment to deter, prevent and punish any illegal activity of this type is working.

73. The New Zealand Government takes a strong stance on the issue of people trafficking. We have in place comprehensive legislation that covers offences associated with people trafficking crimes. These include measures to punish abduction, assault, kidnapping, rape, engaging underage prostitutes, coercing prostitutes, and exploiting workers.

74. In New Zealand, trafficking penalties are comparable to those for murder and rape: imprisonment for up to 20 years or a fine of $500,000, or both.

75. The New Zealand Plan of Action to Prevent People Trafficking was released in 2009. The key components of this Plan of Action include defining the trafficking of people, raising awareness, prevention, and victim support and protection.

Definition of trafficking

76. New Zealand's definition of people trafficking complies with our international obligations. We recognise, however, the need to keep our legislation current. In June 2013 the Government agreed to broaden the definition of trafficking to include an "exploitative purpose".

Raising awareness about people trafficking

77. One of the key goals of the New Zealand Plan of Action to Prevent People Trafficking relates to raising awareness among officials and targeted community groups about people trafficking indicators and anti-trafficking procedures.

78. Government has implemented a public campaign to raise awareness of people trafficking including brochures in six languages on how victims can seek help, an information website that summarises how to recognise and report people trafficking, community newspaper involvement, and Ministerial media releases.

Examples of preventive work with respect to people trafficking

79. Reported issues surrounding the poor treatment of some foreign fishing crews in New Zealand are being addressed. All foreign-owned vessels will be reflagged to New Zealand by 2016. This means that they will be subject to the full range of New Zealand law.

80. In June 2013, the Minister of Immigration announced proposals to amend the Immigration Act 2009 in order to address concerns about poor treatment by some employers of international students and other temporary migrants.

People trafficking – victim support and protection

81. Key achievements relating to victim support and protection are:

(a) Victims of people trafficking are now granted a 12-month temporary entry class visa if they have received certification from the New Zealand Police that they are believed to be victims of people trafficking;

(b) The Health and Disability Services Eligibility Direction 2011 allows victims and suspected victims of people trafficking offences to be eligible for publicly funded health and disability services;

(c) The Ministry of Social Development now makes non-recoverable grants available to victims of trafficking if they or their family are in hardship in New Zealand.

7. Terrorism Suppression Amendment Act 2007

82. The Terrorism Suppression Act 2002 allowed for courts to be able to consider classified information in the absence of the defendant if deemed appropriate. This provision has not been amended in the Terrorism Suppression Amendment Act 2007.

83. In 2007 the New Zealand Police undertook a series of raids known as "Operation 8" relating to potential breaches of the Terrorism Suppression Act 2002 and other offences. The police coordinated and executed 41 search warrants throughout the country. The Independent Police Conduct Authority (IPCA) investigated multiple complaints about Police action in Operation 8. The IPCA found that the Police decision to take action in 2007 was justified.

84. However, the IPCA found the Police acted unlawfully in terms of road blocks, detaining occupants of five properties, stopping and searching vehicles and taking photographs. The Police have accepted the IPCA findings and have apologised to the affected community.

85. The New Zealand Police seeks the consent of the Attorney-General or the advice of Crown Law (except in cases of extreme urgency) prior to effecting arrests or executing search warrants in relation to suspected terrorist offences.

86. Prosecutions under Terrorism Suppression legislation are subject to the consent of the Attorney-General.

87. People subject to this legislation are entitled to the same protections from discrimination and use of force as other suspects, as below:

(a) Like all other persons in New Zealand, terrorist suspects are subject to the protections afforded by the Bill of Rights Act 1990 and may also sue the Crown in tort where appropriate;

(b) An official who uses excessive force can be criminally prosecuted or be subject to civil proceedings;

(c) Police officers are only immune from criminal and civil liability for the use of force in limited circumstances where a statutory immunity applies such as: reasonable force, self defence, or defence of another;

(d) The option of complaining to the IPCA about alleged police misconduct. The IPCA must determine whether any police act or omission was contrary to law, unreasonable, unjustified, unfair, or undesirable. It publicly releases its findings.

88. In summary, New Zealand has robust measures in place to ensure that the Terrorism Suppression and Terrorism Suppression Amendment Acts are not applied in a discriminatory manner and will not lead to excessive use of force.

8. National Preventive Mechanism

89. New Zealand does not have a single National Preventive Mechanism. Instead, the Human Rights Commission is designated as the Central National Preventive Mechanism with coordination, reports, systemic issues and liaison with the United Nations Subcommittee for the Prevention of Torture. Four other National Preventive Mechanisms have been designated with monitoring responsibilities for specific places of detention:

(a) The Office of the Ombudsman – prisons, immigration detention facilities, health and disability places of detention, and Child, Youth and Family residences;

(b) The IPCA – in relation to people held in police cells in the custody of the police;

(c) The Office of the Children's Commissioner – in relation to children and young persons in residences established under section 364 of the Children, Young Persons, and Their Families Act 1989;

(d) The Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defence Force Service Custody and Service Corrective Establishments.

90. The National Preventive Mechanisms are each independent of Government and the agencies that they monitor.

91. In the first five years of the National Preventative Mechanisms in New Zealand since 2007, 385 of the more than 559 places of detention in New Zealand have been visited by the relevant organisations in their role as National Preventative Mechanisms.

92. The 2011/12 annual report of the agencies comprising the National Preventive Mechanism describes lack of resources as an ongoing challenge. The agencies that make up the National Preventive Mechanism have taken on board the environment of financial constraint, however, and are taking a pragmatic approach to performing their functions within the resources available. They collaborate where possible including assisting each other with site visits.

93. Expenditure in 2012/13 by each of the relevant agencies on National Preventive Mechanism activities was as follows:

(a) Human Rights Commission – $48,000;

(b) Office of the Ombudsman – $127,000;

(c) IPCA – $55,000;

(d) Office of the Children's Commissioner – $50,000;

(e) Inspector of Service Penal Establishments – zero.

Article 3

9. Asylum seekers

Asylum seekers and extradition

94. In 2011/12, 303 claims for refugee or protection status were received by the Refugee Status Branch of Immigration New Zealand, of which 119 were approved. Under the Immigration Act 2009 all claims for refugee and protection status are assessed under the Convention, whether or not they claim to be at risk of torture. Statistics are not collected, however, on whether torture was an element of the claim.

95. Protection against torture is absolute. New Zealand's Immigration Act 2009 prohibits expulsion to a place where people face a risk of being tortured. There have been no cases since the 2009 periodic report of people being refouled or expelled who were recognised as refugees in New Zealand, or whose status was not finally decided.

96. The Immigration Act provides a statutory process for determining the risk of torture. Claims for asylum in New Zealand are assessed at first instance by designated refugee and protection officers. Declined claims may be appealed to the Immigration and Protection Tribunal which considers refugee and protection appeals on a de novo basis. If a client makes a refugee or protection claim when already subject to deportation action, the deportation process is halted pending a determination by the Refugee Status Branch.

97. Extradition can be appealed at multiple stages:

(a) When a request is received from a country with which New Zealand has an extradition treaty, the Minister of Justice must decide whether to issue an arrest warrant for the requested individual – this decision can be judicially reviewed;

(b) When a request is received from a country with which New Zealand does not have a formal extradition relationship, the Minister must decide whether to deal with the request under the Act – this decision can be judicially reviewed;

(c) A court must decide whether the individual is eligible for surrender – this decision can be appealed;

(d) The Minister makes the final decision on whether to surrender the individual – this decision can be judicially reviewed.

98. When extraditing, New Zealand relies on diplomatic assurances that the death penalty will not be imposed. Section 30 of the Extradition Act 1999 provides that the Minister may decline to surrender an individual if they are subject to the death penalty and the requesting country is unable to sufficiently assure the Minister that the death penalty will not be imposed.

10. Detention of asylum seekers and undocumented migrants in low security and correctional facilities; right to habeas corpus and appeal

99. Asylum claimants or undocumented passengers who have been refused entry (turnaround cases) can be detained in either a low security immigration facility or at a corrections facility (generally a remand prison).

100. As at 26 June 2013, there were 14 asylum claimants who were released with conditions or released on "reporting and residential requirements agreements". Since the last periodic report, 83 claimants have been detained and subsequently released with such conditions or agreements. The releases were either to the Mangere Refugee Resettlement Centre or into the community.

101. A person who is liable for deportation or turnaround under the Immigration Act 2009 including an asylum seeker or undocumented passenger can be detained under the Act for up to 96 hours without a warrant of commitment. For Immigration New Zealand to detain the person for longer than 96 hours it must apply to a District Court for a warrant of commitment. A District Court Judge can grant a warrant of commitment for a corrections facility for up to 28 days at a time. Each person has the right to legal representation and can challenge the need for detention through the courts.

102. If a decision is made by Immigration New Zealand to seek a warrant of commitment, and if the warrant is granted, persons who are liable for deportation or turnaround are generally detained under remand-like conditions in a Correction's facility. Immigration detainees are not generally detained separate from other remand prisoners. The Corrections facility is, however, made aware that immigration detainees are not facing criminal charges, if that is the case.

103. Facilities are managed by the Department of Corrections under the Corrections Act 2004 and Immigration New Zealand cannot prescribe detention conditions. Immigration New Zealand and the Department of Corrections work closely together on a case by case basis, however, to provide the best possible detention outcome for immigration detainees.

104. Detained asylum claimants or turnaround cases have a right to habeas corpus.

Safe third countries policy

105. New Zealand does not have a "safe third country" policy. We do, however, have legislative provision in the Immigration Act 2009 to consider a claim for refugee status in another country, in the context of international arrangements or agreements.

106. Special protections have also been put in place, in consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), with respect to this provision. New Zealand can only make agreements or arrangements with countries that have appropriate asylum processing arrangements in place. This is consistent with approaches taken in the European Union.

107. New Zealand has not yet used this provision. If we were to use this provision, this would be consistent with our non-refoulement obligation.

Refusal of asylum

108. New Zealand ensures that grounds upon which asylum may be refused comply with international standards. Developments in international law and best practice are followed closely in the asylum determination process. To do this, New Zealand maintains active relationships with UNHCR and with multi-lateral organisations such as the Intergovernmental Consultations on Migration, Asylum and Refugees in Geneva.

109. The Immigration Act 2009 provides a statutory process to ensure New Zealand meets its non-refoulement obligations. This Act requires claims for refugee or "protected person" status to be determined in accordance with the Convention Relating to the Status of Refugees, the Convention against Torture, and Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). UNHCR monitors the claim process in New Zealand and has provided feedback on decisions. Consistent with UNHCR's mandate under the Refugee Convention, claimants are provided with the contact details of the UNHCR office in Canberra to which complaints can be referred.

110. In New Zealand, health and character, beyond provisions in Article 1F of the Refugees Convention, are not grounds for declining a refugee or protection claim or expelling an asylum seeker or refugee.

111. A person who is recognised in New Zealand as a refugee or protected person can apply for a permanent resident visa. The visa can be declined if there is a significant health or character issue. The applicant would in practice be granted a temporary visa that would facilitate access to employment and social assistance. A permanent resident visa holder may apply for naturalisation five years after receiving that visa.

11. Security risk certificates

112. Security-risk certificates continue to be issued under the Immigration Act 2009. These allow the authorities to remove or deport a person deemed to constitute a threat to national security, without providing detailed reasons to the person concerned. If this happens, the police must refer the case to the Minister of Immigration as soon as possible.

113. If the Minister of Immigration certifies that a person constitutes a threat or risk to security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person. The person does not have any rights of appeal. Revocation of this deportation order must be by the Governor-General, again by Order in Council.

114. If the person claims that their expulsion would lead to a risk of torture, their expulsion is stayed until the claim is decided. There are provisions in the Immigration Act for classified information to be used in asylum decision making.

Immigration Amendment (Mass Arrivals) Act 2013

115. In June 2013, the Immigration Amendment (Mass Arrivals) Act 2013 was passed. This Act allows for the detention under a group warrant of a mass arrival group. The initial detention period is for a maximum period of six months, thereafter renewable at 28 day intervals. Detention enables the relevant agencies to make the necessary enquiries into the backgrounds of the individuals, pending decisions on refugee or protection claims. It gives agencies time to establish and confirm identities and assess whether any individual poses a risk to national security or public safety. Warrants are reviewable, and the issuing court must be satisfied they are necessary.

Articles 5 to 9

12. Extradition requests by another State

116. Since 2009, we have not received any requests relating to an offence of torture. No extradition treaties have been entered into since 2009.

13. Acts of torture - war crimes

117. Under the Crimes of Torture Act 1989, New Zealand has jurisdiction over an offence of torture (including attempts, aiding, abetting and inciting) where:

(a) The accused is a New Zealand citizen;

(b) The accused is in New Zealand;

(c) The offence occurred in New Zealand or aboard a New Zealand registered ship or aircraft.

118. New Zealand has had no prosecutions under this section of the Crimes of Torture Act since 2009. New Zealand has not prosecuted any crimes against humanity or any war crimes (that is, offences under sections 10 or 11 of the International Crimes and International Criminal Court Act 2000).

Article 10

14. Training for the judiciary and law enforcement personnel

119. To guarantee the independence and impartiality of the judiciary, the Government does not provide training to the judiciary. That training is undertaken by the Institute of Judicial Studies. The Institute is the professional development arm of the New Zealand judiciary and provides education programmes and resources to judges. The current curriculum offered by the Institute includes domestic human rights legislation and international human rights instruments. The Institute is developing a stand-alone programme teaching human rights instruments, including remedies.

120. An understanding of the Convention is included in the initial training course for all new Department of Corrections' custodial staff. The training reinforces a practical understanding of basic human rights in the work of custodial staff including the Universal Declaration of Human Rights and the Bill of Rights Act. As part of this training module, participants complete a presentation titled "Human Rights and how they apply to me as a custodial officer staff member of the Department of Corrections".

15. Training of relevant personnel to identify and record cases of people trafficking

121. Customs and immigration officers are trained on how to detect suspected trafficking activity at the border. Immigration New Zealand trains frontline staff on trafficking indicators and victim interviewing techniques. Some of this training will be specifically targeted to offshore officers who process visas in order to increase New Zealand's capacity to detect trafficking before it reaches the border. This will also ensure traffickers do not succeed in obtaining any New Zealand visas for their potential victims.

122. The Ministry of Business, Innovation and Employment trains compliance staff to recognise indicators of people trafficking. This is done prior to every compliance operation in the sex industry and whenever there is a possibility the operation may expose staff to trafficking activity. We remain fully alert to the possibility of people trafficking occurring and we have support mechanisms in place for any victims identified. The Ministry provides specific training to all refugee and protection officers. Health and safety officers and labour inspectors are trained on how to detect trafficking activity during their visits to workplaces.

123. In partnership with Stop the Traffick Aotearoa, Immigration New Zealand is training staff of refugee support services to put them in the best possible position to assist any victims of trafficking.

124. The New Zealand Police has included people trafficking in its Criminal Investigations Bureau training module. This is a mandatory part of the Criminal Investigations Branch Selection and Induction Course.

125. The New Zealand Government has agreed to provide trainers for training being offered to a group of Pacific Island countries that is United States-led and funded. The

focus of this training will be on core skills to identify and stop people trafficking, such as document examination, interviewing techniques and witness management.

16. Training of immigration officials and medical personnel employed at immigration centres on the provisions of the Convention

126. New Zealand does not have dedicated detention centres where only asylum claimants are detained. The Mangere Migrant Resettlement Centre is an approved premise for detention of border asylum claimants under the Immigration Act 2009. A judge may direct that a border asylum claimant be detained at or released with conditions to the Centre (discussed in Section 9 under Article 3). Persons may also apply to be released with conditions to the Centre.

127. During their settlement programme, residents at the Centre receive medical and other support. Training for medical and immigration officials on the provisions of the Convention is covered in Sections 15 and 16 below. Department of Correction officers also receive training on the Convention as covered in those sections.

Training for medical personnel to recognise injuries arising from torture and ill-treatment

128. Health professionals can attend training courses designed to help them work effectively with people from culturally and linguistically diverse backgrounds. These courses cover a range of topics including mental health, trauma and disability. This training is in addition to basic health professional training in cultural competency and family violence.

129. The Ministry of Health published, in June 2011, an updated version of "Refugee Health Care: A Handbook for Health Professionals". This handbook includes a section on torture and trauma experiences, and gives medical professionals advice on how trauma experiences may affect a consultation with a refugee. The handbook also provides advice on how to manage a client who may have experienced trauma and torture, how to respond when a client discloses torture, and how to explore whether the client wishes to be referred for psychological counselling.

Training on the Istanbul Protocol

130. The training on the Istanbul Protocol referred to by the Committee, was provided to doctors, lawyers, mental health practitioners and government officials in June 2011. It was the first training for New Zealand practitioners in how to assess, treat and report torture under the standards and guidelines of this international protocol. Participants were able to pass on information and best practices to their colleagues, and lessons learned have since been incorporated into standard operating procedures.

131. An interest group has been formed to meet quarterly to advance common objectives and best practice in the field. More information can be found at: http://www.hrc.co.nz/newsletters/diversity-action-programme/te-punanga/2011/07/first-istanbul-protocol-training-for-new-zealand.

Article 11

17. Interrogation and custody rules

132. New Zealand Police best practice for interviewing suspects is set out in the Police Investigative Interview Doctrine and the accompanying Suspect Guide. This best practice material has not changed since 2009.

133. Changes have been made, however, to the way specialist interviewers of suspects of serious and major crime are trained. The new training programme identifies competent interviewers who will receive specialist training designed for interviewing suspects of serious and major crime. Upon completing their training, the interviewers enter a workplace assessment and accreditation regime to maintain the high standards and skills required by the New Zealand Police.

134. New Zealand Police best practice recommends that all suspect interviews are electronically recorded. Any statement made by a person in custody or in respect of whom there is sufficient evidence to charge is recorded by video recording unless that is impractical or unless the person declines to be recorded by video. Where the statement is not recorded by video, it must be recorded permanently on audio tape or in writing. The person making the statement is given an opportunity to review the tape or written statement, or to have the written statement read out. They are given an opportunity to correct any errors or add anything further, and to approve the statement.

135. Interrogation is not practiced within the New Zealand Corrections system. The Corrections Act 2004 provides for the rights and protections of prisoners, including preventing any potential cases of torture or ill-treatment. There are no powers of interrogation under the Corrections Act 2004.

136. Since New Zealand's last periodic report, the Immigration Act 2009 has been introduced. An immigration officer may detain a person liable to arrest and detention under this Act, until the earliest of:

(a) The exercise by a constable of the power of arrest and detention;

(b) The delivery of the person into custody;

(c) The person no longer being liable to arrest and detention;

(d) The purpose of the detention being achieved;

(e) The elapsing of four hours since the detention commenced.

137. The duties in this Act correspond with the rights provided for in the Bill of Rights Act which confirms the rights of persons detained under an enactment.

138. Immigration detention practices are prescribed by best practice and standard operating procedures. Compliance officers who are authorised to exercise detention powers undergo a rigorous training programme and are re-certified yearly. Each case is subject to a review and approval process and records of the officer's detention actions are maintained.

18. Over-representation of Māori in prison

Māori over-representation in the criminal justice system

139. Māori are disproportionately represented in criminal justice statistics. The Government acknowledges that Māori over-representation is a persistent problem for which there are no easy solutions.

140. Addressing the drivers of crime will reduce the number of people, including Māori, who offend. These drivers and how they are being addressed are discussed in Section 20 under Article 11.

141. The New Zealand Police has also adopted a strategy to reduce Māori offending, reoffending and victimisation. The Turning of the Tide – a Whānau Ora Crime and Crash Prevention Strategy – has improved the way that police engage with and respond to, ethnic communities. As part of this strategy, the New Zealand Police has doubled the number of

its ethnic staff. A prevention philosophy rather than an enforcement ethos is applied. Clear targets are outlined. By June 2015, the goal is to bring about a:

(a) Five percent decrease in the number of first-time youth and adult offenders who are Māori;

(b) 10 percent decrease in the number of repeat youth and adult offenders who are Māori;

(c) 10 percent decrease in the number of repeat victims who are Māori;

(d) 15 percent reduction in Police (non-traffic) apprehensions of Māori resolved by prosecution;

(e) 10 percent decrease in the number of casualties in fatal and serious crashes who are Māori.

Māori in prison

142. Table 2 provides data on the composition of the prison population disaggregated by sex, age, and ethnicity as at 31 March 2013. As at this date:

(a) Māori made up 50 percent of the prison population; by comparison, Māori comprise about 14 percent of the general New Zealand population;

(b) Women made up only 6 percent of the total prison population (504 out of a total population of 8,611), but Māori women made up 58 percent of that female prisoner population (291 out of a total female prison population of 504).

Table 2
Composition of the prison population disaggregated by sex, age and ethnicity as at 31 March 2013

	Māori		*European*		*Pacific*		*Other*		
Age Group	*Male*	*Female*	*Male*	*Female*	*Male*	*Female*	*Male*	*Female*	***Total***
<20	231	17	87	3	50	1	9	3	**401**
20-29	1,527	117	773	44	410	7	124	8	**3,010**
30-39	1,097	81	636	50	282	6	108	8	**2,268**
40-49	803	49	601	43	143	8	67	4	**1,718**
50+	383	27	636	23	95	3	45	2	**1,214**
Total	**4,041**	**291**	**2,733**	**163**	**980**	**25**	**353**	**25**	**8,611**

Source: Department of Corrections.

143. Department of Corrections' analysis of criminal justice statistics indicates that a range of developmental and early-age risk factors create a pathway that increases the risk of (among other things) criminal involvement. These risk factors include:

(a) Family structure, context, and processes (being born to young mothers, a lack of family stability, a family environment in which conflict and violence is common, and being exposed to harsh punishment);

(b) Individual characteristics and experiences of the developing child and adolescent (factors affecting the child's neurological development, and psychological temperament);

(c) Educational participation, engagement and achievement (school absence, early leaving age, and failure to achieve qualifications);

(d) The emergence of developmental disorders (childhood conduct disorder, early onset of antisocial behaviour, and use/abuse of alcohol and other substances).

144. As a consequence of being disproportionately exposed to this range of risk factors relating to social, economic and family circumstances, Māori (particularly younger Māori males) are more likely to be involved in criminal behaviour.

145. Research has been carried out on whether bias operates within the criminal justice system, such that any suspected or actual offending by Māori has harsher consequences for Māori (see Ministry of Justice. 2009. *Identifying and Responding to Bias in the Criminal Justice System: A Review of International and New Zealand Research*, http://www.justice.govt.nz/publications/global-publications/i/identifying-and-responding-to-bias-in-the-criminal-justice-system-a-review-of-international-and-new-zealand-research/publication#-full-pdf-report). This report found that:

(a) Research aiming to identify bias in the criminal justice system has been characterised by a host of methodological problems, and neither qualitative nor quantitative studies have delivered definitive answers on how and why differential outcomes are perpetuated;

(b) Research on possible bias has not led to the successful development or implementation of policies to address ethnic disproportionality in the criminal justice system.

146. In 2007, the Department of Corrections examined criminal justice data and research findings and concluded that although an over-representation relating solely to ethnicity is associated with prosecutions, convictions, sentencing and reconviction in New Zealand, most of this is accounted for by other known risk factors (Department of Corrections. September 2007. *Over-Representation of Māori in the Criminal Justice System: An Exploratory Report*).

Strategic plan for Māori in prison

147. The Department of Corrections has introduced an overarching strategy, Creating Lasting Change 2011–2015. This supersedes all previous strategic documents, including its Māori Strategic Plan 2008–2013. Creating Lasting Change recognises that success with Māori offenders is key.

148. All Department of Corrections' initiatives are designed to work for Māori offenders. Internal evaluation of programmes reveals that, for Māori offenders who participate in the Department's rehabilitation programmes, outcomes are as good as are achieved for non-Māori offenders and in some cases better. Programmes and data on outcomes are discussed in below under Rehabilitation and reintegration and in Section 20 under Article 11.

Measures to reduce the over-representation of Māori in prison

149. Under the auspices of Creating Lasting Change:

(a) The Department of Corrections has begun revitalising its prison Māori Focus Units (MFUs), lifting the achievement level to an elite standard nationwide. The units address the needs of offenders using cultural values and principles;

(b) The number of credits toward national qualifications being earned by Māori offenders has continued to increase, from 30,000 in 2009 to 65,000 in 2012;

(c) All prison health centres are developing a Māori Health plan that recognises the higher health needs of Māori.

150. Addressing the drivers of crime will take some time. In the meantime, the Department of Corrections has implemented a wide range of strategies and interventions to reduce re-offending by Māori. Some of the most notable are:

(a) The establishment of a Māori Services team in January 2009 heavily focussed on strengthening reintegration opportunities for Māori offenders;

(b) The operation of MFUs in five male prisons which use tikanga Māori concepts (resolving disputes face-to-face) to motivate and rehabilitate Māori prisoners;

(c) Delivery of tikanga Māori programmes in most prisons to improve the willingness and motivation of prisoners to address their offending behaviour;

(d) Māori Therapeutic Programmes operating in all MFUs using cognitive behavioural therapy tailored with tikanga Māori to address offending behaviour and risks;

(e) Whānau liaison workers in each MFU who establish links between prisoners and their whānau (family), hapu (sub tribe), and iwi (tribe) prior to release from prison;

(f) Kaitiaki (guardians) are Māori groups from areas in which the four newest prisons have been established. Kaitiaki are actively involved in supporting the rehabilitation and reintegration of Māori prisoners;

(g) A pilot of specialist Māori cultural assessments in two male prisons. This assessment identifies the cultural needs and strengths of Māori offenders.

151. Additional information is provided under Rehabilitation and reintegration below.

Women prisoners and the Bangkok Rules

152. While New Zealand has not ratified the Bangkok Rules, women offenders are managed in a manner that takes into consideration their specific needs and family circumstances. Male and female prisoners are separated, with women housed in three women's prisons across New Zealand. Staff at women's prisons can attend specific training for working with and understanding female offenders, and there is separate training available for managing female prisoners.

153. Examples of programmes specifically designed for women offenders include:

(a) Kōwhiritanga – a rehabilitation programme based on Māori values available for female offenders in prison and in the community; this has been specifically designed for female offenders to address their re-offending risk factors;

(b) The programme takes into account how women relate to others and form attachments, and addresses additional factors linked to the offences that the women have committed such as abuse, victimisation, and substance abuse;

(c) Mothers with Babies units – these are separate units within prisons for the accommodation of mothers and their children aged up to nine months or two years (depending on the prison). The units provide mothers and their babies with a supportive environment. They aim to reduce the unintended negative impacts that maternal imprisonment (particularly enforced separation) has on children, in order to improve future outcomes for those children.

154. Pregnant women in prison have access to additional resources and support, such as antenatal and parenting programmes, the involvement of a support person, and suitable clothing for mother and baby.

Rehabilitation and reintegration

155. Reducing re-offending is a key result area for the New Zealand Government. Under Better Public Services, the Government has set a target to reduce re-offending by 25 percent between 2011 and 2017, with 4,600 fewer offenders returning each year. This equates to about 18,500 fewer victims each year. To achieve this goal, the Department of Corrections is addressing the drivers of crime and investing more in rehabilitation and reintegration. In order to assist these efforts, in 2012 the Department of Corrections changed its structure to better integrate all corrective services, including the Rehabilitation and Reintegration Service team, towards the common goal of reducing re-offending.

156. The Department of Corrections' Rehabilitation and Reintegration Service, established in January 2009, has played an important role in reducing re-offending in New Zealand. Between June 2010 and June 2012:

(a) The 12 month reconviction rate for offenders on community sentences decreased by 4.4 percent;

(b) Significant progress was made within specific rehabilitation activities, including:

(i) Increasing the availability of drug and alcohol treatment in prison;

(ii) Increasing participation in employment related activities that result in recognised qualifications;

(iii) Improving the quality of existing rehabilitation programmes;

(iv) Changing the way Corrections staff work with offenders to encourage and motivate them to address their offending behaviours.

157. One of the Department of Correction's rehabilitation and reintegration programmes – Whare Oranga Ake – helps prisoners train for employment, find work and accommodation on release, and form supportive networks. The aim is to enhance the prisoner's prospects of successful reintegration and reduce the likelihood of re-offending. Prisoners live communally within the units and take on all the responsibilities of daily living to prepare them for life outside of prison. Māori practices, language and values underpin the running of the units.

19. Age of criminal responsibility

Special protection for children aged under 18 years of age

158. Children up to the age of 17 years who are in conflict with the law are accorded special protection in compliance with international standards. Those aged 17 are not covered by the youth justice system and are prosecuted as adults, although the Youth Court does have some jurisdiction over 17 year olds on existing orders or if they are arrested in relation to an offence committed when they were aged 16 years or younger. The Sentencing Act 2002 identifies age as a mitigating factor which must be taken into account by the District Court.

159. The Crimes Act 1961 sets the age of criminal responsibility in New Zealand at 10 years of age. Children aged 10-14 years old are open to a very narrow range of criminal charges, and very few end up facing prosecution in a youth or adult court. Most offending by children is dealt with under the care and protection jurisdiction of the Family Court, where the welfare of the child is the main concern.

160. Ten and 11 year olds may only be charged with murder or manslaughter. While 12 and 13 year olds can be charged with a wider range of offences, they can only be charged if

their offending has become particularly serious or persistent. In the last 20 years, there have been no 10 or 11 year olds convicted of murder or manslaughter in New Zealand.

Minors prosecuted in the Youth Court by type of sentence

161. The number of young people aged 14 to 16 who appeared in the Youth Court reduced by 21 percent between 2009 and 2011 (Table 3). Over the same period, the number of young people in this age group who received a sentence of imprisonment decreased by 24 percent. The number of young people receiving a home detention sentence decreased by 50 percent. On the other hand, the number of young people aged 14 to 16 receiving a sentence of supervision with residence increased by 11 percent.

162. The number of young people appearing in the Youth Court has fallen because more family group conferences are being held, more young children are staying in school and truancy rates are falling. A more proactive approach is being taken to youth offenders by police and the courts.

Table 3
Numbers of offenders aged 14 to 16, by year 2009-2012

	Year				*Percent change*
	2009	*2010*	*2011*	*2012*	*2009 to 2012*
Number of young people aged 14 to 16 appearing in Youth Court	4,524	3,942	3,579	3,018	-33
Number of young people aged 14 to 16 receiving an imprisonment sentence	46	43	35	17	-63
Number of young people aged 14 to 16 receiving a home detention sentence	18	24	10	9	-50
Number of young people aged 14 to 16 receiving a sentence of supervision with residence	114	111	126	129	13

Source: Ministry of Justice.
Note: Age is determined at the time the offence was committed.

163. Data from 2011/12 shows that the highest re-offending rate is for Pasifika youth (39.6 percent) and Māori youth (39.2 percent), while the rate for European/Pākeha youth is slightly lower (35.6 percent). The effectiveness of interventions for young offenders to reduce re-offending would benefit from improvement.

Beijing Rules and youth facilities

164. Principles guiding the administration of youth justice in New Zealand are set out in the Children, Young Persons, and Their Families Act 1989 (CYPFA). These principles are consistent with New Zealand's obligations under international human rights law, in particular those arising from the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules).

165. The diversionary principles of the CYPFA mean that most young people are dealt with outside of the formal court system. In 2011, 68 percent of apprehensions of children and young people were resolved through a warning, a caution, or alternative action by Police Youth Aid. A further nine percent were resolved through a plan developed during a family group conference.

166. Young people who are arrested are usually bailed or held in police custody in a police cell until the young person appears in court. People aged up to 16 years of age (and, if possible, those aged 17 years) must be kept separate from older people.

167. The National Preventative Mechanism agencies published a joint thematic review of young persons in police detention in October 2012 under the Optional Protocol to the Convention against Torture. This report found that in 2011, 213 young people were detained in police cells for more than 24 hours, for a total of 394.2 days and an average detention period of 1.9 days. Situations where a young person may be held in police custody for 24 hours or more are exceptional and confined to where the young person is likely to abscond or be violent, and/or alternative accommodation is not available. Safeguards to limit detention of young persons in police custody are provided in the CYPFA, and the Commissioner of Police must be informed of each case in writing. Following the October 2012 joint thematic review, the New Zealand Police has rolled out training on working with children and young people. This will be supported by the release in November 2013 of a training module on youth-specific custody.

168. The Department of Corrections has dedicated youth units for male prisoners (2.6 percent of all prisoners) under the age of 18 years. Male prisoners aged 18 and 19 years may also be housed in these units if they are assessed as potentially vulnerable within the general population, and it is in their best interests. There are no separate units for young female prisoners as there are fewer than five young women prisoners at any one time. Young women are housed with older female prisoners but can be separated from other inmates if the need arises.

169. Youth and vulnerable young adults who are actively "at risk" will not be placed in a youth justice unit. They may instead be placed in a residence established under section 364 of the CYPFA.

170. Young people who are sentenced by the Youth Court to a "supervision with residence order" are accommodated in specialist youth facilities run by Child, Youth and Family. Residents of all the units have access to a range of educational, vocational, psychological and recreational activities in a structured and supportive environment.

20. Overcrowding in prisons

United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)

171. New Zealand aims, wherever possible, to reduce overcrowding in prisons and to use non-custodial forms of detention in line with the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules).

172. Under the Sentencing Act 2002, the sentencing court must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community. A range of non-custodial sentences are available to the sentencing court.

173. The Department of Corrections uses long term justice sector forecasting to assess future operational requirements and to help reduce the likelihood of future overcrowding. It allows the Department of Corrections to plan policy responses and to more effectively manage its prison network. A quarterly snapshot is now used of the relative performance of each prison. A prison's performance rating is based on a range of indicators including assaults, incidences of self-harm, complaints and offender participation in programmes.

174. Two of New Zealand's older prisons were closed in 2012/13, along with several older units in other prisons. These facilities were considered to be past their working life, with inadequate facilities that promoted neither safety nor prisoner rehabilitation.

Prison numbers and data on the sharing of cells

175. Data on the prison population, including the capacity and occupancy rate of all places of deprivation of liberty, are provided in Table 4 below.

Table 4
Prison muster, capacity and occupancy rates since 2009

Year *As at 30 June*	*Muster*	*Capacity*	*Occupancy rate*
2009	8,326	9,131	91%
2010	8,746	9,907	88%
2011	8,589	10,631	81%
2012	8,618	10,280	84%

Source: Department of Corrections.

176. Since 2009 we have extended the use of double bunking in response to the closure of older prisons and consequential re-housing of prisoners. Throughout 2009 and 2010, the Department of Corrections conducted research on the impact of double bunking, particularly with regard to the safe, secure and humane containment of prisoners.

177. Data on the number of cells shared by two or more prisoners are provided in Table 5 below.

Table 5
Number of cells shared by two or more prisoners 2009-2011

Year	*2009*	*2010*	*2011*
Number of cells shared by two or more prisoners	933	843	1,038

Source: Department of Corrections.

178. Department of Corrections research has found no evidence that increases in double bunking are associated with increased incident rates. This research included interviews with prison managers, staff and prisoners from 12 prison units, and analysis of prisoner assaults and incidents of disorder. It was also found that some prisoners prefer double bunking. Sometimes double bunking is necessary because of a shortage of cells. There are no plans to eliminate double bunking.

179. The Department of Corrections has developed the Shared Accommodation Cell Risk Assessment that assesses the suitability of prisoners for cell sharing generally, and their suitability for sharing a cell with particular prisoners. Prisoners are re-assessed at regular intervals, and retain the right to have complaints about their treatment heard, and responded to where appropriate. There are also quality requirements for cells to be used for double bunking set out under delegated legislation.

180. Currently there is no triple bunking. The Department of Corrections believes that any suggestion of triple bunking may have stemmed from the short duration use of dormitory style cells in an older prison (Wellington Prison) in 2007. These cells were designed to hold more than two prisoners and were used in response to the growing prison muster. That prison was closed in 2012.

Changes to sentencing practices - non-custodial sentences

181. New Zealand has five alternatives to custody that are available to a sentencing court, although more severe offences may have a mandatory sentence of imprisonment. All sentences are overseen by the Department of Corrections.

182. The Sentencing Act 2002 provides for five non-custodial sentences:

(a) Home Detention (introduced in 2007);

(b) Community Detention (introduced in 2007);

(c) Intensive Supervision (introduced in 2007);

(d) Supervision;

(e) Community Work.

183. Since the introduction of these sentences, lower risk offenders who would have received a short term of imprisonment are now receiving community-based sentences or orders.

184. Home Detention: requires an offender to remain at an approved residence at all times under electronic monitoring and close supervision by a probation officer. It can help offenders to maintain family relationships, keep working or actively seek work, and attend training or rehabilitative programmes. Sentences may range in length from 14 days to 12 months.

185. Community Detention: is a community-based sentence that requires the offender to comply with an electronically-monitored curfew imposed by the court. Offenders can be sentenced for up to six months. Curfews can total up to 84 hours per week. The minimum curfew period is two hours.

186. Intensive Supervision: is a rehabilitative community-based sentence that requires offenders to address the causes of their offending with intensive oversight from a probation officer. It targets offenders who have been convicted of more serious offences and who have complex and/or severe rehabilitative needs. Offenders can be sentenced for between six months and two years.

187. Supervision: is a rehabilitative community-based sentence that requires offenders to address the causes of their offending. Offenders can be sentenced to supervision for between six months and one year. In addition to Supervision, the court may also sentence the offender to: pay a fine; pay reparation to the victims; do unpaid work through a community work sentence; and be under electronically-monitored curfews through a Community Detention sentence.

188. Community Work: requires offenders to do unpaid work in the community for non-profit organisations as a way of making up for their offending. Community work can be done anywhere in the community from parks and reserves to schools, marae, and churches. It can involve painting, gardening, building, graffiti cleaning, restoration, recycling, and more. Some offenders may also be concurrently serving other community sentences so, as well as doing Community Work, they may have to regularly report to a probation officer and attend programmes to address their offending.

189. Table 6 below shows the number of prisoners out of the total convicted since the last report who were given a non-custodial sentence: 82 percent to 84 percent of all sentences each year.

Table 6
Number of offenders "starting" non-custodial sentences by year

Year	Total convicted (custodial and non-custodial)	Total number of non-custodial sentences	Home detention	Community detention	Intensive supervision	Supervision	Community work
2009	**62,894**	**51,721**	3,084	3,749	2,474	9,727	32,687
2010	**66,609**	**55,036**	3,713	5,176	2,570	10,360	33,217
2011	**64,088**	**52,907**	3,131	5,403	2,392	10,759	31,222
2012	**64,655**	**54,087**	3,402	6,164	2,317	11,475	30,729

Source: Department of Corrections.

Changes to policing practices

190. The New Zealand Police, along with the Corrections Department (also discussed in Section 18 above under Article 11), are changing their practices as part of the larger set of measures to reduce offending and reoffending.

191. From 2011 New Zealand Police has a new Prevention First operating strategy. This strategy puts prevention at the forefront of everything the Police does, ultimately to reduce crime and crashes, and make New Zealand a safer place to live, visit and to do business. It also seeks to reduce apprehensions resolved by prosecution by 19 percent, and reduce recorded crime by 13 percent by 2014/15. The strategy puts victims and witnesses at the centre of the Police's response.

192. The New Zealand Police seeks to avoid putting people in prison or keeping individuals in police cells overnight. Prevention First aims to stop people from entering the system. Pre-charge warnings were introduced in September 2010. By September 2012, these warnings resolved 10 percent of charges instead of proceeding to prosecution (representing a total 34,845 such warnings issued).

Privatisation of prison management

193. Privatisation of prison management is a new initiative in New Zealand. Currently there is only one contract-managed prison (Mt Eden Corrections Facility).

194. In 2012, the Government announced that a consortium of companies had been chosen to design, finance, build, operate and maintain a new 960-bed prison facility at Wiri, South Auckland, expected to open in 2015. The Wiri prison is expected to provide a strong focus on results. The contract will include:

(a) Performance incentives, such as achieving lower recidivism rates than the average for publicly run prisons;

(b) Financial penalties for failing to meet short-term rehabilitation and reintegration measures such as prisoner health and employment targets;

(c) Custodial standards.

195. The prison will also provide additional follow up services outside the prison gate for prisoners to access after they have been released from custody.

196. Under the Corrections Act 2004, contract-managed prisons must comply with the same domestic laws, international standards, and obligations relating to prisoner welfare and management as publicly managed prisons. These prisons must provide regular reports to the chief executive of the Department of Corrections including details of prisoner

complaints, incidents of violence or self-harm involving prisoners, disciplinary proceedings taken against prisoners and/or staff, escapes and attempted escapes, and prisoner deaths.

197. Privately-managed prisons are subject to the same inspection regime by the Ombudsman as public prisons. They are also subject to oversight by monitors appointed by the chief executive, and can be required to undergo specific investigations by experts within the Department of Corrections if issues of concern arise. The chief executive is accountable at all times for the welfare and wellbeing of prisoners held in all prison, including contract-managed prisons.

Reduction of the time prisoners are held in custody on remand

198. The average time on remand increased from 54 days in 2009 to 59 days in 2012, and to 60 days in 2013 (to date). Primarily, the length of remand is determined by a prisoner's plea, the court process, and judicial decisions. We are committed to reducing time on remand and are focused on making our court processes faster and more efficient.

199. Remand times are forecast to reduce by an average of six days due to criminal procedure reforms, from 2014. This is based on the assumption that there will be a 30 percent reduction in jury trials as a result of the new legislation. Those trials will be heard by a judge-alone, it will take less time for people to get to trial, and less time will be spent on remand.

Results from measures to reduce offending and address the drivers of crime

200. As well as reducing reoffending by 25 percent by 2017, the other Better Public Services targets for the justice sector are to reduce over the same timeframe: overall crime by 15 percent; violent crime by 20 percent; and youth crime by five percent.

201. Addressing the drivers of crime is a challenging task because the causes are multiple, inter-related and intergenerational. By coordinating efforts across agencies, the drivers of crime programme is delivering on a government commitment to address complex, long-standing problems with an emphasis on reducing Māori offending and victimisation. This work is showing results in four areas:

(a) Improving maternity and early parenting support for those at risk;

(b) Addressing conduct and behaviour problems in childhood;

(c) Reducing harm from alcohol, and improving treatment;

(d) Supporting and diverting low-level offenders away from long-term patterns of offending.

Improving maternity and early parenting support for those at risk

202. The rate of preventable hospitalisations for Māori and Pacific children aged zero to four years of age and who live in the most deprived areas is down 22 percent and 17 percent respectively between 2006/07 and 2011/12.

203. The proportion of Māori children from the poorest neighbourhoods who had not received any early childhood education before starting school decreased by 17 percent between 2006 and 2012.

Addressing conduct and behavioural problems

204. The Positive Behaviour for Learning programme provides initiatives for schools, teachers and parents to promote positive behaviour in children and young people.

Reducing harm from alcohol

205. The percentage of apprehensions where alcohol was involved has remained relatively constant since 2009. In the period 2009-2012, at least a third of apprehensions involved an offender who had consumed alcohol.

206. A $10 million package of initiatives was launched in 2012 to improve the access of offenders to assessment and treatment for alcohol and drugs. This includes the establishment of two Alcohol and Other Drug Treatment Courts.

Supporting and diverting low-level offenders away from long-term patterns of offending

207. More than 14 percent of criminal charges are now resolved by pre-charge warnings instead of proceeding to prosecution. Offending rates for Māori youth dropped by 32 percent (with a 31 percent drop for total youth offending) between 2008 and 2012.

208. Total youth reoffending dropped by 10 percent between 2007 and 2011.

209. We have a particular focus on reducing offending and re-offending and victimisation among Māori and Pacific people. We are working with local iwi (tribes) to develop joint responses and explore opportunities to coordinate youth justice service delivery. We have already set up 10 Rangatahi Courts. These take onto the marae (the Māori meeting place) part of the court process; with the monitoring of non-custodial sentences carried out within a cultural setting.

210. The Release-to-Work programme enables prisoners with sentences of less than two years to maintain their pre-sentence employment or improve their post-sentence employment prospects.

Articles 12 and 13

21. Investigation of torture and prosecutions

211. Since 2009, four legal complaints have been received by the New Zealand High Court regarding ill-treatment in prison (see Table 7).

Table 7
Legal complaints received by the New Zealand High Court about ill-treatment in prisons since 2009 disaggregated by demographic characteristics

	Complaint 1 *104 claimants*	*Complaint 2* *1 claimant*	*Complaint 3* *1 claimant*	*Complaint 4* *1 claimant*
Claimed ill-treatment	Ill, and inhumane treatment while in prison.	Cell confinement for disciplinary offences exceeded what could be lawfully imposed. Did not receive managerial and medical oversight during period of cell confinement to which was entitled.	Segregated into a cell with no showers, toiletries or washbasin. Was only allowed half an hour outside cell; was denied rehabilitative programmes; and was unlawfully subjected to a penalty of cell confinement. Had to reuse disposable cutlery and was	Held in isolation; deprived eating utensils; not allowed cigarettes; deprived adequate light/ ventilation; not allowed books/ newspapers; was allowed only a modesty gown; held on a tie down bed as punishment; left in a cruel and degrading state, and denied basic

	Complaint 1 *104 claimants*	*Complaint 2* *1 claimant*	*Complaint 3* *1 claimant*	*Complaint 4* *1 claimant*
			denied toothpaste; had to use a toilet where he could be seen by passers-by. Had property stolen by staff.	human entitlements while on a tie down bed; spoken to in a cruel/ degrading manner; degraded as such that he smeared himself with faeces, ate food straight off the floor and self-harmed; forced to shower in full view of other prisoners, visitors and female staff with no privacy; denied a minimum entitlement of one hour out of the cell at varying times.
Crimes committed by claimant	Range of criminal offending including sexual, violent and dishonesty offences	Male assaults female, resisting police, common assault	Unlawful sexual connection, male rapes female (over 16), male assaults female	Burglary, aggravated assault, male rapes female, unlawful sexual connection, unlawful sexual connection (under 12 years)
Ethnicity of claimants	Māori: 63; Pacific Island:17; Asian:1; NZ European:19 Other: 4	NZ European	Māori	NZ European
Age	Under 35 years: 4; 36–41 years: 59, 42–51 years: 28, over 52 years: 9, unidentified: 4	35 years	40 years	31 years
Gender	All claimants are male	Male	Male	Male

Source: Department of Corrections.

212. Investigations by the Ombudsman since 2009 under the Crimes of Torture Act 1989 have found no evidence of torture. Allegations of torture have been investigated by New Zealand Police and also raised in court proceedings, but none to date have been found to meet the requirements for prosecution.

213. New Zealand Police prosecution decisions are made according to the published Prosecution Guidelines, developed by Crown Law, which are intended to assist in determining:

(a) Whether criminal proceedings should be commenced;

(b) What charges should be laid;

(c) Whether, if commenced, criminal proceedings should be continued or discontinued; and to:

(d) Provide guidance for the conduct of criminal prosecutions;

(e) Establish standards of conduct and practice.

214. The Guidelines do refer to an assessment of public interest prior to prosecution, but:

(a) That term is defined, and places particular weight on prosecution of serious offences;

(b) There is no conceivable factor that would outweigh prosecution of a prima facie case of torture;

(c) Prosecution decisions are subject to oversight and to compliance with international obligations.

22. Discretion of the Attorney General

215. The consent of the Attorney-General is required for prosecutions for alleged acts of torture. This reflects the serious nature of the crime and ensures that such a significant charge is properly administered. If allegations are clear that an act of torture may have been committed, the Attorney-General would consent to prosecution.

23. Compensation

216. There have been no instances of compensation of victims of torture, as none of the cases about torture or ill-treatment have resulted in prosecution (see Section 22 above).

. Independent Police Conduct Authority (IPCA) investigations

217. The Independent Police Conduct Authority Amendment Act 2007 marked a major shift in the direction of the IPCA from an individual to a Board comprising both legal and lay experts of up to five members. Members of the Authority are appointed by the Governor-General on the recommendation of the House of Representatives.

218. The IPCA exists to ensure and maintain public confidence in the New Zealand Police. Following its designation as one of the agencies making up the National Preventive Mechanism, the IPCA has inspected many police sites equipped with detention facilities throughout New Zealand. Should it receive a complaint alleging torture, cruel, inhuman or degrading treatment, the IPCA has jurisdiction to investigate the matter.

219. The site visit team consists of independent experts with experience outside of the Police. Any staff with backgrounds in policing in New Zealand do not form part of the site visit teams. The team consists of the IPCA (as part of the National Preventive Mechanism), staff with expertise in human rights law, and staff with other appropriate experience.

220. The IPCA may choose to decide to take no action on a complaint in circumstances where the complainant has had knowledge of the matters for more than 12 months before the complaint of torture was made. Given the seriousness of the accusation, however, it is likely that the IPCA would investigate historic complaints of torture.

221. Since 2009 the IPCA has adapted its classification system so that it now records the number of complaints received on the grounds of torture, or cruel, inhuman or degrading treatment. As part of its functions under the Optional Protocol, the IPCA has developed systems to enable complaints that fall within the Protocol to be identified and impartially investigated.

222. IPCA is unable to bring a criminal prosecution against any alleged perpetrator of the crime of torture. Where a complaint is filed under the Crimes of Torture Act, the New Zealand Police must determine whether there is admissible, reliable and strong evidence to establish a prima facie case. If the Police consider it is in the public interest to prosecute, and the alleged perpetrator can be located, they can be arrested subject to the Attorney-General's consent. Given the gravity of torture as an offence and the obligations under the Convention, it is highly probable – other than where there is an insufficient prospect of prosecution – that the Police would proceed with a charge of torture.

Article 14

24. Redress, compensation and rehabilitation for victims of torture

223. The Crimes of Torture Act 1989 expressly prohibits any act of torture against another person in or outside of New Zealand. Claims brought under this Act can be heard before the New Zealand courts. Redress and compensation can be assessed and awarded by the courts on a case by case basis. There have been no prosecutions for an act of torture under the Crimes of Torture Act since our last report.

25. Rehabilitation and reintegration

224. People hurt by crime and trauma who live in New Zealand, including any victims of torture, can access help from Victim Support. This 24/7 service is free of charge throughout New Zealand. Volunteers are carefully selected and receive quality training on all aspects of providing supports to victims of crime and trauma.

225. The Ministry of Justice provides Court Victim Advisors and specialist Sexual Violence Court Victim Advisors throughout New Zealand to assist victims while their cases progress through court. These services are offered to approximately 40,000 victims across New Zealand annually.

226. A Victims Centre was established within the Ministry of Justice on 1 July 2011 as part of the Government's review of victims' rights in the criminal justice system. The Victims Centre itself does not deliver services directly to victims. The purpose of the Centre is to reduce victimisation and improve services to victims of serious crime by:

(a) Providing victims with access to information about their rights, entitlements and the criminal justice process;

(b) Purchasing effective services and support for victims of serious crime and reporting to Government on the effectiveness of this investment;

(c) Acting as the Government's central point of coordination for victim issues and leading stakeholder engagement (with other government agencies and the not for profit sector) to improve the design and delivery of services provided for victims of serious crime;

(d) Supporting government agencies in their efforts to reduce repeat victimisation.

227. Additional information about mechanisms to support victims is included in Section 28 under Article 14 below.

26. Historic abuse: complaints, claims and compensation

Statistics

228. Data is provided below on the number of civil claims **in court** for historic experiences of cruel treatment, and the status of those claims. Historic cases of abuse are

defined as claims arising from a person who first entered State care before 31 December 1992.[1]

(a) Historic Claims team, previously the Care Claims and Resolution Team (CCRT), the Ministry of Social Development (MSD)

- From 1 January 2004 to 30 June 2013 458 claims have been filed in the High Court. As at 30 June 2013, 153 of these claims have been discontinued with settlement reached in 102 of these;
- Claims from two plaintiffs have proceeded to hearing. The plaintiffs could not overcome either the Limitation Act or the Accident Compensation Commission defences. Nevertheless the court found that there had been breaches of the duty of care in both cases. If the Limitation Act and Accident Compensation Commission defences had not applied the plaintiffs would have struggled in any compensation award because the Court found the breaches did not ultimately cause the damage they manifested as adults. To recognise those breaches, MSD made ex gratia payments and provided formal letters of apology to the plaintiffs;
- In May 2011, counsel for the plaintiffs and MSD agreed that all outstanding proceedings would be managed through an out-of-court process, if possible. This agreement includes MSD suspending the effects of Limitation Act, which ensures that no person is disadvantaged by using the out-of-court process. The courts have formally approved this change in approach, and good progress is being made to resolve cases this way;
- As at 30 June 2013, MSD has made payments to 167 people who have brought claims directly against MSD. The payments to date have ranged from $1,150 to $70,000, exclusive of any contribution made by MSD to the individual's legal costs.

(b) Ministry of Health

- The Crown entered into a settlement process with 336 claimants prior to 30 June 2012. This related to proceedings that had been filed against the Crown relating to allegations of abuse in psychiatric facilities prior to 1992. Of the 336 claimants, settlements were reached with 330, three rejected the settlement proposal, and three have been unable to be located;
- Another two proceedings were heard by the High Court, relating to allegations of abuse in psychiatric facilities prior to 1992, with the claims being unsuccessful in both cases.

229. Information is provided below on the number of cases dealt with by other bodies that can provide compensation, apologies and other remedies:

(a) Confidential Listening and Assistance Service (CLAS), Department of Internal Affairs:

- CLAS provides a forum for people who allege abuse or neglect, or who have concerns about their time in state care in the health, child welfare or special

[1] The Mental Health (Compulsory Assessment and Treatment) Act was passed in 1992, and put a new regime in place relating to oversight of mental health treatment. In addition, the year 1992 also broadly aligns with the health sector reforms which resulted in the disestablishment of the Area Health Boards, and the eventual transfer of responsibility for any liabilities of those Boards.

education sector, before 1992, including psychiatric hospitals and wards; health camps; child welfare care; and special education homes;

- CLAS is chaired by a retired District Court Judge. Judge Henwood has selected a panel of appropriately qualified individuals to meet with people who were in State care and hear about their experiences and concerns. The panel listens and identifies assistance that may assist the lives of participants now. A facilitator is available to provide participants with support and advice through the process and implement assistance agreed by the panel, including referring participants to agencies for formal investigation of their concerns;
- The number of participants who have registered with CLAS since its inception in 2009 total 1,346. Of these, 371 had been referred to MSD's Historic Claims team as at 18 October 2013. Over the same period, 48 participants were referred to the Ministry of Health, 9 to the Ministry of Education and 62 were referred to the New Zealand Police;
- Funding for CLAS ceases in June 2015. In order to meet with the 290 people waiting to meet the CLAS panel before June 2015 it has been necessary to close registrations now.

(b) Historic Abuse Resolution Service (HARS):

- Responsibility for liabilities for historic claims relating to former Area Health Boards has been transferred to the Ministry of Health. The Ministry has established HARS, to complement the services offered by the CLAS and supports resolution of claims by claimants without the need for court proceedings;
- The Ministry's service considers allegations of abuse of former residents of state-run psychiatric facilities prior to May 1993 and, in appropriate cases, approves a letter of apology and ex-gratia payment of up to $9,000;
- There have been 66 applications to HARS since July 2013. Of those, 28 cases had been settled, nine cases did not proceed (as they more appropriately belonged – and were referred - to another organisation), and 29 cases were awaiting resolution. In the majority of cases awaiting resolution, an offer had been made and was under consideration by the individual.

230. Legal aid is available for historic abuse claimants.

Information about MSD's Historic Claims team and its independence

231. The Historic Claims team was established by MSD in 2006 as the CCRT. It operates under the Client Advocacy and Review Group of MSD, which is separate to Child, Youth and Family (the part of MSD responsible for the provision of statutory social work services). The team works closely with CLAS, and lawyers represent many of the complainants.

232. The team comprises the Manager and eight senior social work advisors. The social work advisors are responsible for working directly with clients to investigate and resolve their complaints. All have extensive backgrounds in social work and a variety of other disciplines including specialist interviewing, counselling and management. The team is supported by the MSD's legal services team and works closely with CLAS, Crown Law and the solicitors who represent many of the claimants.

233. Due to the upsurge over the past two years in the number of people utilising the historic claims resolution process, there is now a delay of at least two years from the initial meeting with a complainant to when a detailed investigation of the client's case can be

commenced. MSD acknowledges that this delay is unacceptable and is working hard to find solutions that minimise the delay but do not affect the integrity of the resolution process. MSD has committed to the responsible Minister that all historic claims of abuse will be closed by 31 December 2020.

Prosecutions and convictions of perpetrators, and redress to victims

234. Any historic claims clients who allege a criminal offence are encouraged and supported by staff to make a complaint to the New Zealand Police.

235. In the health sector, there has been one prosecution/conviction relating to treatment in psychiatric facilities prior to 1992. This was reported in R v Harawira [1989] 2 NZLR 714, which involved an assault on a patient in Carrington Hospital in 1989. The assailants were convicted and sentenced to imprisonment. Details of any compensation or redress to the victim are confidential.

236. Prior to responsibility being transferred to the Ministry of Health in 2002, the Health Funding Authority (HFA) was the body established to administer assets and liabilities of former Area Health Boards and had no role in the delivery of services at psychiatric facilities. The Committee has asked about disciplinary action against staff at the HFA. As this organisation had no oversight of service delivery, there have been no grounds for disciplining HFA staff.

237. MSD does not collect data on the number of clients who have made complaints to the Police about staff or ex-staff members, but is aware that four ex-staff members or caregivers have been convicted of offences against children or young people in their care in the past few years. No disciplinary action has been taken against any staff in respect of historic abuse claims.

27. Claims from psychiatric patients discontinued because of a specific Supreme Court decision, and compensation awarded

238. In September 2009, the Supreme Court made a decision on the application of a statutory provision of the Mental Health Act 1969 whereby claims relating to events prior to 1972 can no longer be pursued through the courts.

239. $5 million was made available in compensation for the purposes of the settlement, which included a lump sum ex-gratia payment up to a maximum of $18,000 per person, settlement of legal aid liabilities, and a letter of apology.

240. As part of the settlement, all remaining claims were required to be discontinued. Claims remain for the six claimants who either refused the settlement or cannot be located.

How compensation is dealt with where limitation restrictions bar claims

241. MSD has agreed to set aside Limitation Act considerations in dealing with claims outside of the court.

242. Persons who allege that they have suffered abuse while in care in state-run psychiatric facilities prior to 1992 may seek consideration of their case, including an apology and an ex-gratia payment of up to $9,000 in appropriate cases, from the Ministry of Health.

Lake Alice Hospital

243. $10.8 million has been paid in compensation to the victims of ill-treatment perpetrated at Lake Alice hospital after 1972; 185 claimants received compensation. The

amounts paid to each claimant are subject to the terms of a confidentiality agreement as part of the settlement.

244. Legal fees have not been deducted by the Crown from the compensation awards made to the Lake Alice claimants.

(a) The Crown is aware that claimants in the first round of settlements had an agreement with their lawyers to have their fees deducted from the settlement amount.

(b) As part of the second round of settlements, legal costs for the claimants were met directly by the Crown. It was proposed to pay a settlement amount which was discounted to reflect the actual amounts received by first round claimants after deduction of legal fees (and maintain overall parity). Following the Zentveld judicial review proceedings,[2] however, the Crown reviewed that position and agreed not to discount the amount payable. It offered a top-up payment to affected second round claimants (effectively reversing the deduction).

245. The Committee has asked whether Justice Gallen took legal fees into account when making his determinations about compensation to victims. We can confirm that legal fees paid to legal advisors had no bearing on Justice Gallen's determinations.

246. The New Zealand Police has previously investigated complaints relating to allegations of abuse at Lake Alice and no charges were laid following that investigation. The New Zealand Police acts independently in its enforcement role and where individuals allege police misconduct relating to any investigation, these matters are more appropriately raised with the IPCA. The Crown does not propose undertaking any further review.

Measures to prevent abuse reoccurring in State institutions

247. Please refer to the information provided in "Special Measures to Make Mentally Ill or Disabled People Aware of Their Rights to Legal Representation" in Section 2 under Article 2 above.

Oversight mechanism for psychiatric facilities

248. New Zealand has a system of independent oversight of psychiatric institutions. The Ministry of Health funds independent lawyers, known as district inspectors, who work for the Director of Mental Health. The district inspectors have right of access to any psychiatric institutions at any time without warning. Further details of their role are outlined in Section 2 under Article 2 above.

249. The Office of the Ombudsman, in its National Preventive Mechanism role, monitors the conditions of detention in secure health facilities. The Health and Disability Commissioner and the Mental Health Commissioner also provide an important layer of independent oversight.

Publication of report on allegations of psychiatric abuse in state institutions

250. Between 2009 and 2011 the Human Rights Commission undertook an independent review of the state's response to historic claims of abuse and mistreatment while in state care. On the basis that the processes had improved over time and that all claims would be resolved by 2020, the Commission has not completed its report. The Commission's future response will depend on its assessment of the effectiveness, fairness and timeliness of the claims resolution processes.

[2] Zentveld was a Lake Alice claimant.

28. Victims of torture and crime

251. The Law Commission tabled in Parliament its report Compensating Crime Victims in December 2010. The report recommended amending legislation to allow property to be restrained in anticipation of a reparation order being made, and to reprioritise payment of reparations over legal aid contributions. The Government has respectfully declined these proposals on the grounds that the costs of establishing and administering the proposal would outweigh the benefits.

252. While the solution proposed by the Law Commission was rejected, the Government is improving the legal mechanisms available to enforce reparation for the benefit of victims. Through amendments in 2011 to the Summary Proceedings Act 1957 we have made improvements to how reparation and other monetary penalties are collected from offenders.

(a) The amount of any overdue reparation or other monetary penalty is now, for example, released to credit reporting agencies to provide defaulters with a greater incentive to pay;

(b) Unaffordable reparation can now be replaced with another sentence, including imprisonment if this could have been imposed at the time, to discourage offenders from making unrealistic offers to pay reparation;

(c) From late 2013, the Ministry of Justice will be able to suspend driver licences where penalties have not been paid, providing a further incentive for offenders to pay their reparation.

253. These improvements will improve the way we hold offenders to account and should mean that more reparation is collected for victims.

254. The Victims Rights Act 2002 was reviewed in 2009. As a result of that review, the Victims of Crime Reform Bill was introduced in 2011. It contains amendments to enhance victims' rights and role in criminal justice processes and to improve the responses of government agencies to victims of crime by:

(a) Strengthening the accountability of criminal justice agencies by introducing a Victims' Code which will provide victims with information on the services available, their rights, and the duties and responsibilities of criminal justice agencies;

(b) Requiring criminal justice agencies to record specific information on the services provided to victims, complaints received and how they were resolved, and will be required to include this information in their Annual Report to Parliament;

(c) Improving provisions for victim impact statements by providing that victims of serious offences (which under the Bill will include most sexual offences) will have the right to read all or part of their victim impact statement themselves in Court, or have someone else read out their statement;

(d) Improving access to and information on restorative justice conferencing; enhancing the Victim Notification System by explicitly including all victims of sexual offences as eligible to be given notice of specific events (parole, bail) to do with the relevant offender;

(e) Widening the pool of victims who have the right to provide their views on certain events to do with the offender (parole, bail) to include victims of sexual violence.

255. The Bill has been through its public consultation phase in Select Committee and is ready for the final stage of passage into law.

256. Additional information about victims and the assistance available to them is also included in Section 25 under Article 14.

Withdrawal of reservation to Article 14

257. New Zealand maintains a reservation to Article 14 making compensation available only at the discretion of the Attorney-General. At the time New Zealand entered the reservation, there was no statutory remedy for torture victims. Since the reservation was entered, however, the Bill of Rights Act has been enacted. Courts have held that compensation may be awarded for breaches of the Bill of Rights Act. This means compensation for victims is available through the Bill of Rights Act and other statutory schemes. It is therefore, arguable whether New Zealand complies with Article 14.

Article 15

29. Evidence Act

258. Section 29 of the Evidence Act 2006 explicitly provides for the exclusion of statements influenced by oppression (or violent, inhuman, or degrading conduct toward or treatment of the defendant or any other person, or threats of such conduct), and meets the requirements in Article 15 of the Convention.

Article 16

30. Tasers

Experience of Taser use and consequences

259. Data on the experience of Taser use by New Zealand Police is provided below. This data relates to a combination of:

(a) The Taser "reintroduction period", from 1 December 2008 to 21 March 2010, based in the police districts of Auckland, Waitematā, Counties Manukau and Wellington;

(b) The Taser "national rollout period", which began on 22 March 2010 across all 12 police districts (up to and including 30 June 2012, the most recently available data at the time of request);

(c) Part of the data from the Taser reintroduction period was previously supplied to the convention. Some data provided here will, therefore, overlap with that previously supplied as it reflects the full Taser reintroduction period.

260. Police staff who deploy a Taser are required to complete a Tactical Options Report (TOR). The data provided to the Convention is derived from these reports.

261. During the Taser reintroduction period there were 165 TOR events where a Taser was used: 151 were "shows" (deholster, presentation, laser painting, and arcing modes) and 14 were "discharges". A breakdown of this use, by mode of deployment, is provided in Table 12 below.

Table 12
Taser TOR events by highest mode of deployment

	1 December 2008 to 21 March 2010					
	Deholster	*Presentation*	*Laser painting*	*Arcing*	*Discharge*	***Total***
Reintroduction	11	21	118	1	14	**165**

Source: New Zealand Police.

Note: During the Taser reintroduction period, it was not mandatory to report deholstering a Taser. Accordingly, the number of deholsterings during the reintroduction period may be greater than the number reported here.

262. Across the reintroduction period, there was one non-probe wound Taser-related injury, described as minor, and characterised within the TOR as a "cut, scrape, or abrasion" and "swelling or bruising" to the head/face area.

263. Data is also provided from 22 March 2010, when the use of Tasers was rolled out nationally to all 12 police districts, until 30 June 2012 (the most recently available data).

Table 13
Taser TOR events by highest mode of deployment

	22 March 2010 to 30 June 2012				
	Presentation	*Laser painting*	*Arcing*	*Discharge*	***Total***
National roll-out	276	1,029	14	213	**1,532**

Source: New Zealand Police.

Note: Since the Taser national rollout period, Taser deholsterings are no longer reported in the TOR database.

264. Across the national roll-out period, there were 13 non-probe Taser-related injuries. Five were classified as minor (no self/staff treatment), seven as moderate (received treatment from a medical professional), and one as severe (received treatment at a hospital). One injury was classified as severe because the individual received treatment at a hospital. In this instance, the individual received a cut to the head, which required stitches, as the result of a fall during the Taser discharge.

Demographic data of persons against whom Tasers were used

265. Data is provided below on the demographic characteristics of people against whom Tasers have been used. To place this data in a meaningful context, it is presented per 10,000 New Zealand Police apprehensions. The nature and extent of police use of force is dictated by a range of complex and dynamic factors, pertaining to the specifics of an individual event, the degree of physical threat experienced by police officers when apprehending an individual, and the most appropriate tactical response to the situation encountered.

266. During the Taser reintroduction period (1 December 2008 to 21 March 2010), the three main **ethnic groups** against whom Taser was used (all modes) were New Zealand European, Māori, and Pasifika peoples (Table 14). Per 10,000 New Zealand police apprehensions, there was very little difference in the rate of use across these three groups.

Table 14
Ethnicity of people involved in Taser TOR events

	1 December 2008 to 21 March 2010	
	Number	*Per 10,000 apprehensions*
NZ European	64	17
Māori	60	16
Pacific peoples	35	18
Other	4	-
Unknown	2	-

	1 December 2008 to 21 March 2010	
Total	**165**	**16**

Source: New Zealand Police.

267. During the national rollout period (22 March 2010 to 30 June 2012), the three main ethnic groups against whom a Taser was used (all modes) remained New Zealand European, Māori, and Pasifika peoples (see Table 15). Per 10,000 police apprehensions, there was some difference in the rate of use across these three groups. By ethnicity, Pasifika peoples were those most likely to experience Taser use (all modes) when being apprehended (39 uses per 10,000 apprehensions).

Table 15
Ethnicity of people involved in Taser TOR events

	22 March 2010 to 30 June 2012					
	Shows	*% of shows*	*Discharges*	*% of discharges*	***Total***	*Per 10,000 apprehensions*
European	472	36	80	38	**552**	23
Māori	634	48	101	47	**735**	31
Pacific	183	14	26	12	**209**	39
Other	27	2	6	3	**33**	20
Unknown	3	0	0	0	**3**	-
Total	**1,319**	**100**	**213**	**100**	**1,532**	**27**

Source: New Zealand Police.

268. The **age** of people against whom Tasers were used (all modes) is outlined in Tables 16 and 17 below. During the Taser reintroduction period, the vast majority of those against whom Tasers were used (all modes) were adults (aged 17 years or older) – 90 percent of known individuals - while 6 percent were youth (aged 14 to 16 years), and no individuals were children (aged 13 years or younger). In the context of police apprehensions, the largest proportion of Taser use (all modes) also involved those in the older age categories.

Table 16
Age of people involved in Taser TOR events

	1 December 2008 to 21 March 2010	
	Number	*Per 10,000 apprehensions*
0-9	0	0
10-13	0	0
14-16	10	9
17-20	24	10
21-30	39	13
31-50	74	24
51 and above	12	26
Unknown	6	-
Total	**165**	**16**

Source: New Zealand Police.

269. During the national rollout period the vast majority of those against whom a Taser was used (all modes) were adults (95 percent of known individuals), while four percent were youth, and one individual was a child (Taser "show" only). With regard to Taser discharges specifically, 98 percent involved adults. In the context of police apprehensions, the rate of Taser use (all modes) was highest against those aged 31-50 (43 instances per 10,000 apprehensions), and lowest against those aged 14-16 (10 per 10,000).

Table 17
Age of people involved in Taser TOR events

22 March 2010 to 30 June 2012

	Shows	*% of shows*	*Discharges*	*% of discharges*	*Total*	*Per 10,000 apprehensions*
10-13	1	0	0	0	**1**	-
14-16	64	5	4	2	**68**	10
17-20	206	16	18	8	**224**	18
21-30	403	31	72	34	**475**	29
31-50	576	44	108	51	**684**	43
51>	65	5	11	5	**76**	26
unknown	4	0	0	0	**4**	-
Total	**1,319**	**100**	**213**	**100**	**1,532**	**27**

Source: New Zealand Police.

270. The sex of those against whom a Taser was used (all modes) during the Taser reintroduction period is outlined in Table 18 below. The vast majority of those against whom a Taser was used (all modes) were male (93 percent). Police apprehensions involving males were also more likely than those involving females to result in the use (all modes) of a Taser.

Table 18
Sex of people involved in Taser TOR events

1 December 2008 to 21 March 2010

	Number	*Per 10,000 apprehensions*
Male	153	19
Female	12	6
Total	**165**	**16**

Source: New Zealand Police.

271. During the national rollout period the vast majority (93 percent) of those against whom a Taser was used (all modes) were male; this proportion is the same as that for the reintroduction period (see Table 19).

Table 19
Sex of people involved in Taser TOR events

	22 March 2010 to 30 June 2012					
	Shows	*% of shows*	*Discharges*	*% of discharges*	*Total*	*Per 10,000 apprehensions*
Male	1,220	92	201	94	1,421	32
Female	98	7	12	6	110	9
Unknown	1	0	0	0	1	-
Total	**1,319**	**100**	**213**	**100**	**1,532**	**27**

Source: New Zealand Police.

Relinquishing the use of Tasers

272. The New Zealand Police has not considered relinquishing the use of Tasers. Taser "shows" and discharges are closely monitored. Tasers are an important tactical option to ensure the safety of both the public and police, particularly in the context that police in New Zealand do not routinely carry firearms.

Data on the number of police officers certified to use a Taser

273. As at 30 June 2012 there were 8,940 constabulary staff in the New Zealand Police, and 4,252 constabulary staff certified to deploy a Taser.

Monitoring

274. Since the previous periodic report, key changes to the Taser policy include:

(a) Members are no longer selected and approved to use a Taser; this is now aligned with their deployment role. They must hold a current New Zealand Police First Aid certification, New Zealand Police Taser operator or instructor certification, and Police Integrated Tactical Training Programme (Staff Safety Tactical Training) certification;

(b) Supervisor's authority is no longer required for staff to carry and deploy with a Taser.

275. In terms of monitoring and compliance of Taser use, policy requires that after an event where a Taser is used or when notified of an operational Taser "show" (presentation, laser painting or arcing) the supervisor is required to follow specified steps. These include the recovery of all evidence, a determination of whether the use of Taser was in accordance with the Taser Standard Operating Procedures (SOPs), requiring those involved to submit a Tactical Options Report, and informing the district Taser coordinator prior to going off duty. The supervisor is required to attend the scene and ensure appropriate aftercare has been provided where a Taser was discharged or there was a "contact stun".

276. Tactical Options Reports are reviewed and commented on at district level by the operator's supervisor and a commissioned officer (an inspector or above). All Taser uses involving a discharge or contact stun are subject to a national level of review by an appointed Taser Assurance Forum.

Updating of standard operating procedures and training

277. The New Zealand Police continues to enhance SOPs and training. The relevant Taser Police Manual chapter was first published in December 2008. It has since been revised four times, in July 2010, May 2011, January 2012 and November 2012.

278. Taser refresher courses are conducted annually. To remain certified, staff must attend and demonstrate proficiency to the standard prescribed by the course.

Police personnel subjected to disciplinary or criminal measures for improper Taser use

279. No New Zealand Police personnel have been subject to disciplinary or criminal measures for improper use of a Taser.

Complaints regarding Taser use submitted to the IPCA

280. Two complaints regarding Taser use were submitted to the IPCA in 2010 and five in 2012.

Complaints resulting in criminal prosecution or disciplinary action

281. After investigation, none of the seven complaints were upheld, so no disciplinary or criminal action has been taken.

31. Mental health of prisoners and beds available

Mental health screening of prisoners

282. All prisoners are initially screened within the first seven days of reception by a registered nurse. If the nurse determines that an offender may have mental health needs, they are referred to a specialist mental health team for further clinical assessment and the type of care they are to be provided. The number of beds available for regional forensic psychiatry services in the greater Auckland region has remained fairly static over the last four years (see Table 20).

Table 20
Number of forensic beds for regional forensic psychiatry services in the greater Auckland region by facility 2009/10 to 2012/13 (rounded)

	Waitemata DHB	*Challenge Trust*	*Penina Health Trust*	*Raukura Hauora O Tainui Trust*	***Total***
2009/10	104				**104**
2010/11	104	7	3	3	**117**
2011/12	96	10	3	5	**114**
	Waitemata DHB	*Recovery Solutions Services Ltd*	*Penina Health Trust*	*Raukura Hauora O Tainui Trust*	***Total***
2012/13	96	10	3	5	**114**

Source: Ministry of Health.

Waiting lists

283. The number of people on the waiting list for the Auckland Regional Forensic Psychiatry Service has ranged between approximately 11 people up to a peak of 25 people at any one time since 2009.

284. Pressures on the waiting list in Auckland have been managed by the introduction of five additional beds in 2013/14 which are supplied by the Central Regional Forensic Mental Health Service. While the additional beds have alleviated the immediate service pressures for Auckland, further work is underway to manage the pressure on Auckland forensic services in the medium to long term.

285. There has been a steady reduction in the number of acute people "red flagged" on the waiting list (remaining on the waiting list outside of the agreed wait times) since February 2013. On 4 February 2013 about 17 percent of acute waitlisted people were "red flagged", dropping to approximately six percent by 2 April 2013.

Steps to protect the mentally ill

Measures to ensure mentally disabled people are not unreasonably restrained

286. All service providers are required to ensure that individuals subject to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the ID(CC&R) Act) receive the best possible care available and that they themselves are safe from harm, as are others. Practice is guided by ethical principles that include acting for the care recipient's good (beneficence), avoiding harm to the care recipient (non-maleficence), avoiding harm to self and others, and respecting the dignity and human rights of the care recipient.

287. Restraint of a care recipient is a serious intervention that is only authorised when in accordance with the relevant provisions of the ID(CC&R) Act. It should be considered only after exhaustion of other interventions such as de-escalation. Proactive approaches to avoid the use of restraint should be considered at all times. Restraint should never be used to inflict pain or as a means of diversion, distraction or punishment.

Seclusion

288. Seclusion may sometimes be required to fulfil duty of care and is authorised under sections 60 and 61 of the ID(CC&R) Act and section 71 of the MH(CAT) Act. It may only be used in a forensic hospital level service in accordance with the provisions set out in the MH(CAT) Act and in an area (seclusion rooms) approved by the Director of Area Mental Health Services.

289. Seclusion can only occur where, and for as long as, it is necessary for the care or treatment of the patient, or for the protection of other patients. Seclusion should be an uncommon event, and should be used only when there is an imminent risk of danger to the individual or others and no other safe and effective alternative is possible. Seclusion should never be used for the purposes of discipline, coercion or staff convenience, or as a substitute for adequate levels of staff or active treatment.

290. The duration and circumstances of each episode of seclusion must be recorded in a register, which must be available for inspection by district inspectors. These inspectors can investigate and report any use of seclusion that is unlawful or appears to unnecessarily impinge on a patients' rights under the MH(CAT) Act.

291. New Zealand has a policy of reducing the use of seclusion in mental health facilities over time. The Health and Disability Services (Restraint Minimisation and Safe Practices) Standards note that the intent of the standards is to reduce the use of restraint in all its forms and to encourage the use of the least restrictive practices. The Standards came into effect on 1 June 2009. In February 2010 the Ministry of Health published revised guidelines for the use of seclusion in mental health services. The guidelines align with the Standards and identify methods for using seclusion in mental health acute inpatient units.

292. The Ministry of Health's Director of Mental Health publishes an annual report containing statistics on mental health treatment, including on the use of seclusion of people in mental health facilities. The 2011 Annual Report showed a decline in the number of people secluded since the Standards came into effect. In calendar 2011, 14 percent (967) of patients in an adult mental health unit (excluding forensic and other regional rehabilitation services) were secluded at some period. On average, these patients were secluded 3.5 times.

Specific acts and their investigations and outcomes

293. Two specific cases were investigated by the Office of the Ombudsman in 2008/09. The Report of the Ombudsman on these cases notes that "in both instances the Chief Ombudsman wrote to the respective chief executives of the district health boards concerned, and we are pleased to report that one patient has since been moved to a more suitable facility and the other now has a management plan to facilitate a move into a suitable community based facility".

294. Although the Ministry of Health receives monthly reports from district inspectors on breaches of rights of patients cared for under both the MH(CAT) Act and the ID(CCR) Act 2003, these cases were not drawn to the Ministry's attention through these means.

295. In the case of the complainant subject to the MH(CAT) Act, the Ministry of Health contacted both the Office of the Ombudsman and the district health board responsible for the person's treatment following release of the Report of the Ombudsman. The Chief Ombudsman advised the Ministry in writing that, based on the information she had received from the chief executive of the district health board, she was satisfied that no further action was required by the National Preventive Mechanism. The district health board also provided detailed information about the case that satisfied the Ministry of Health that no further investigation of the matter was necessary.

Instruments of restraint in prisons

296. The Corrections Act 2004 and Corrections Regulations 2005 provide that restraints can only be used when reasonably necessary for self-defence, in the case of an escape or attempted escape, or to prevent the prisoner from damaging property or resisting a lawful order.

297. During 2009 and 2010, the prison inspectorate received six complaints regarding the use of control and restraint as procedures to subdue violent prisoners. None of these complaints were upheld.

298. During the same period, there was one complaint made by a prisoner to the High Court regarding the conditions of their detention, including the use of ankle straps. While the judge ruled in the prisoner's favour, no compensation was awarded. The Court is prohibited from awarding compensation unless it is satisfied that the prisoner has made reasonable use of all specified and internal complaint mechanisms. In this case, the claimant did not make an internal complaint, despite having many opportunities to do so, and so was considered not to have made use of available mechanisms. Since this case, guidelines have been revised for clarity, to ensure legal compliance with the use of mechanical restraints.

Denial of parole hearings

299. The Parole Board manages a comprehensive process each month to ensure all offenders with a parole eligibility date are allocated a hearing date if a parole hearing has not already been scheduled. In addition, a weekly quality assurance process is followed that confirms that all eligible offenders are allocated hearing dates.

300. Over the past decade the Department of Corrections has not been made aware of any incidents where offenders under its jurisdiction have been denied notice of parole hearings.

301. The Annual Reports of the Ombudsman for 2008/09 and 2009/10 refer to cases where people convicted under the Criminal Procedure (Mentally Impaired Persons) Act 2003 may have been denied the ability to attend their Parole hearings on time. This was due to inadequate notification between agencies detaining these people.

302. Agencies have since strengthened information sharing polices and processes to ensure those on hybrid orders are heard by the Parole Board on time. No further incidences have been identified by the Office of the Ombudsman.

III. General information on the national human rights situation

303. The Committee has asked questions about:

(a) New developments on the legal and institutional framework promoting and protecting human rights;

(b) New political, administrative and other measures taken to promote and protect human rights;

(c) New measures and developments undertaken to implement the Convention and the Committee's recommendations.

304. We consider that the body of this report answers those questions.